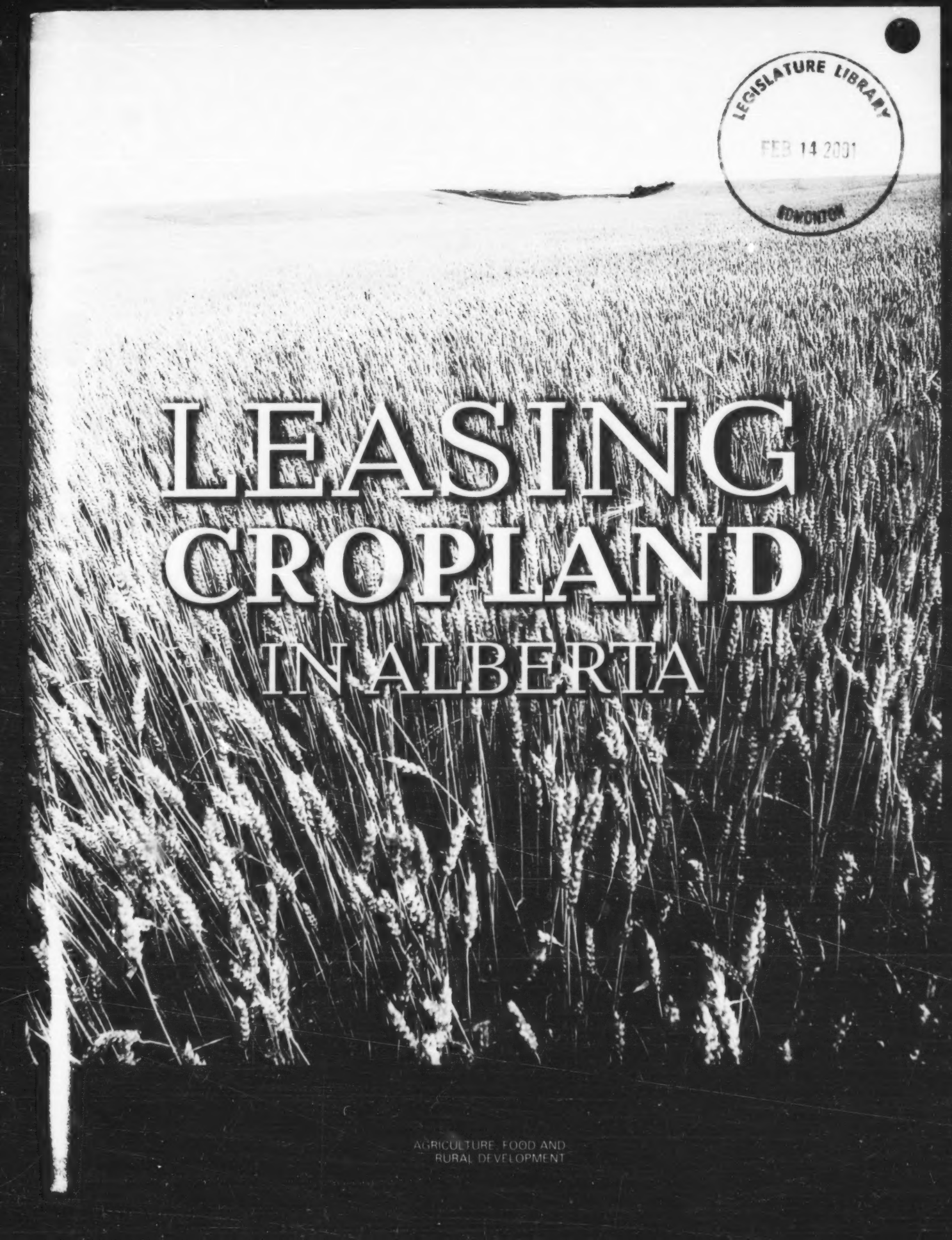

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LEASING CROPLAND IN ALBERTA

AGRICULTURE, FOOD AND
RURAL DEVELOPMENT

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LEASING **CROPLAND** IN ALBERTA

Bob Winchell and Dann Mattson

Disclaimer:
The information contained in this publication should not be considered as either an interpretation or complete coverage of all of the laws affecting land rental arrangements, nor the implications of the *Income Tax Act*. The Government of Alberta assumes no responsibility towards persons using it as such.

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Foreword

This publication is intended to provide a comprehensive overview of the wide range of issues associated with land leasing agreements. A sample lease agreement is provided. It can be used by landlords and tenants to help draft an agreement that meets their specific needs. Several different approaches to arriving at a rental rate are also described. Current rental rates, leasing practices and land value changes are contained in the appendix of this publication.

We wish to acknowledge Saskatchewan Agriculture and Food's publication ***Land Rental Arrangements*** (1998) and Alberta Agriculture, Food and Rural Development's ***Leasing Cropland in Alberta*** (1992) as the basis for this publication. The ***Legal Issues*** and the ***Sample Agreement*** sections were provided by Katharine Hurlburt from the law firm Wilson and Hurlburt in Edmonton. Additional information was presented by Colin Simmons from the law firm of Simmons and Kitchen in Calgary.

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Introduction

The large capital investment associated with farming today makes leasing cropland a good alternative to owning it. With approximately 40 per cent of Alberta's farmland leased from the government or private landowners, business arrangements between landowners and tenants are important. The number and importance of these business arrangements is likely to increase in the future as the age of landowners increases and they use leasing as a method of transition from active farming to retirement. The transfer of cropland to non-farming children is also a growing source of lease land. At the same time, young farmers are actively seeking lease land as a financially feasible way to expand their farming operations.

There are two basic parts to developing a lease agreement. One is to negotiate the various terms. The other is to negotiate the price, i.e. rent per acre for a cash lease or share of crop for a crop share lease. This publication provides information to assist prospective tenants and landowners with the task of negotiating an agreement. A wide variety of points are presented that can be used as a checklist for setting up an agreement that is suitable to the two parties concerned. Some different methods of analysing rental rates and crop shares are presented to help both sides arrive at an equitable rate. A sample lease agreement is provided as a guide for preparing an actual agreement.

This publication does not recommend one type of arrangement over another, but provides an overview of features and issues associated with the three main arrangements: cropshare, cash and flexible cash. It also helps answer the following questions.

- Our lease is only verbal; is it a lease? (Page 16)
- My landlord sold the land I'm renting and I still have two years left. Can the new owner put me off the land? (Page 18)
- I'm renting my land out on a crop share basis. Do I have to pay a portion of the fertilizer and chemicals? (Page 8)
- My tenant isn't farming the land properly. How can I terminate this lease? (Page 39)
- On a crop share lease who owns the straw? (Page 8)
- Our lease expires this fall and there are fewer acres in hay than when I started farming it. Do I have to pay for the difference? (Page 8)
- An oil company is drilling a well on land that I'm renting. Am I entitled to compensation from the oil company or does it all go to the landowner? (Page 9, 38)
- My tenant wants to grow GMO canola on my land. What should I do? (Page 10, 34)

Land Leasing as a Farm Business Arrangement

Alberta's cropland is controlled through the use of a variety of business arrangements. These arrangements reflect the different levels of risk and reward being taken by both the landowner and the tenant. The information below lists several different types of arrangements and the risk associated with them.

Ownership Type	Risk
Owner/operator	The landowner bears all of the production and marketing risk, reward, and capital requirements of farming and land ownership.
Custom farming arrangements (landowner)	The landowner contracts with an equipment owner/operator to do some or all of the field operations. The landowner bears all of the risk, but reduces the capital required for the ownership of machinery.
Partnership/joint venture	The landowner may share some of the risk and reduce some of the capital required.
Crop share lease arrangements	The landowner gives up use of the land in exchange for a share of the crop. The landowner and tenant share the risk and reward based on the terms of the agreement.
Flexible cash lease arrangements	The landowner receives a payment that varies within a predetermined range. The landowner's risk is reduced.
Cash lease arrangements	The landowner receives a predetermined payment. The landowner's risk is minimized, while the tenant bears all of the production and price risk.

Advantages and Disadvantages of Leasing Cropland

Leasing cropland is an important type of business arrangement used by landowners and tenants to utilize the land resource while sharing the risk and rewards associated with owning and farming the land. There are both advantages and disadvantages to leasing cropland.

Advantages

Obtaining Capital

Capital investment is shared between two individuals in a land lease arrangement. The landowner supplies land, buildings and perhaps some of the operating expenses. The tenant supplies management, labor, machinery and usually, the major portion of the operating expenses. In this way, the tenant can either establish or expand the business without having to obtain capital for buying land. Since leasing is an alternative to ownership, it's really an alternate means of acquiring a land base.

Increasing Efficiency

When funds are limited, it's often more profitable to spend money on seed, fertilizer, chemicals and machinery. Leasing additional land, rather than purchasing it, is often a good way to utilize the existing machinery investment and labor resource. Investing scarce funds in land may severely restrict the money available for operating capital, thus lowering the efficiency of the farm.

Obtaining Farm Experience

Leasing allows a beginning farmer to gain experience in the financial operation of a farm business before making a long-term investment in land. Leasing lets a tenant study the quality, price and availability of land in the area. Leasing also provides beginning farmers with a chance to access the knowledge and managerial skills of older, more experienced landowners.

Sharing Risk

By leasing, both the landowner and tenant can share in the risk and rewards of farming. This is particularly important to a tenant with limited capital. The extent of the risk and rewards sharing depends on the nature of the lease agreement.

Family Business Arrangements

Parent-child business arrangements are common and take many different forms. Examples might include a lease agreement whereby a child (son/daughter) rents land from a parent (father/mother), or rents land from a third party and shares the machinery investment with a parent through a machinery use agreement.

Providing Retirement Income

A business arrangement can also be used to provide retirement income. Instead of selling their land base, retiring farmers can lease out all, or a portion of their land. The ownership of land provides a hedge against inflation and the rental income provides a form of pension income to live on during retirement.

Farmers who are approaching retirement can gradually phase out of farming by renting out a portion of their land. In this way the workload is reduced, but an active interest in farming is maintained.

Disadvantages

Lack of Security of Tenure

Although short-term leases provide more flexibility for the landowner, they create additional uncertainty and insecurity for the tenant. To be efficient, tenants need to match the size of their equipment to the land base they are working with. Thus, the cancellation of a short-term lease can leave tenants in an over-capitalized, high cost situation.

Short-term leases provide more flexibility to landlords as it's possible to change tenants quickly, or sell the land. However, short-term leases can work to the detriment of the landlord as there is little incentive for tenants to use superior farming practices.

Lack of Efficiency, Conservation and Incentive to Make Improvements

Short-term leases may discourage production efficiency. For example, some tenants may not use the optimum amount of fertilizer unless the landlord shares in the expense of the fertilizer.

Most conservation practices are of a long-term nature. Therefore, tenants with short-term leases are mainly interested in practices that show results during the term of the lease. Similarly, improvements of an intermediate or long-term nature (e.g. drainage, establishing forage crops, correcting major weed problems) aren't encouraged unless there are provisions for compensation contained in the agreement.

Lack of Credit

The length of a lease can also affect the credit a tenant can access. Typically, a tenant has more trouble obtaining intermediate and long-term credit than an owner-operator. Lenders often require land as security for longer term loans. Leased land doesn't build equity and a short lease doesn't provide much security.

Lack of Bargaining Power and Managerial Control

The landowner may insist on making most of the management decisions, even though his contributions to the lease are substantially less than those of the tenant. For example, the landowner may insist that certain crops be grown, even thought they may not be the most profitable for the tenant.

Lost Opportunity for Capital Gain

Although land prices do decline occasionally, generally the price of land increases over time. The appreciation of land is an important benefit to the landowner that isn't available to the tenant (see Appendix II - Rate of Change of Land Values in Alberta).

People Problems

As with any business venture involving two or more people, disputes and disagreements can arise.

Potential loss of Capital Gain Rollover and Capital Gains Exemption

Land leased to anyone other than a spouse or child, or a spouse's or child's family farm corporation or partnership may not qualify for the rollover or capital gains exemption.

These rules are complex. For additional information, please refer to the *Taxation Issues* section of this publication (page 21).

Requirements for a Successful Lease

Compatibility

It's important that the landowner and tenant are able to get along and resolve disagreements that may arise. Even under the most compatible situations between a landlord and tenant, there are times when they may not be able to agree. Provisions should be written into the lease agreement for arbitration of differences by a third party.

Honesty

It's important that all the individuals involved in a business arrangement are honest. The landowner in a crop share arrangement should be particularly concerned about the integrity of the tenant as the tenant provides the specified crop share yield and bills for the agreed portion of input costs.

Equitable Terms

Most tenants and landowners want to receive a reasonable return from a lease. If either party feels its return is unsatisfactory, it jeopardizes the chance of the lease continuing.

Performance

The ongoing success of the arrangement is enhanced if both parties perform according to the terms of the agreement. Tenants who do a good job of farming the land are often able to extend a lease and lease additional land.

Communication

The likelihood of an agreement succeeding is improved if both parties make an honest effort to communicate. Landowners like to know that the land is being well cared for. Tenants who keep their landowners informed about cropping plans, growing conditions and management practices develop a trust that can lead to a lease renewal.

Flexibility

Lease agreements should recognize that people's interests, wants and needs change over time. Economic and social conditions also change. It's important to write enough flexibility into any written agreement to permit an equitable adjustment for unexpected situations that may occur.

Suitability

Arrangements must fit the needs of the individual situation. Leases should be of sufficient duration to permit relatively long-term practices on the land. Long-term leases give the tenant more security and encourage them to use good management practices. The lease should also be simple enough so that it's workable.

Negotiating a Land Lease

A land lease agreement between a landowner and a tenant is arrived at through negotiation between the two parties. In some cases negotiations are brief. In other cases they are extremely detailed. In any case, negotiations must take place because no standard lease agreement can apply to all situations. The following points outline some of the steps required to negotiate a lease agreement.

Describe the Land

Although it may seem like an obvious step, the first step is to provide an accurate description of what is being offered for rent. Based on accurate information, prospective tenants can evaluate the suitability of the land for their needs.

Specify Terms and Conditions

The landowner can specify certain conditions to be included in a lease agreement. These could include a cash or crop share lease, cropping restrictions and management practices.

Offering the Land for Lease

It's uncommon to see farmland advertised for rent in the local paper. Most land never goes onto the market. Instead, it's usually offered to a prospective tenant that the landowner feels comfortable dealing with. The following describe the methods landowners use to offer land for rent.

Private invitation or offer

The landowner offers the land to someone he knows and trusts.

Selected invitation to tender

The landowner offers the land to a few potential tenants who the landowner feels comfortable in dealing with. The selection of the successful tenant may be based on the price offered, but it may also take into account other conditions of the proposed lease and the overall trust and confidence in the prospective tenant. The highest bid isn't necessarily accepted.

Open invitation to tender

The landowner offers the land to anyone interested in bidding. Usually, potential tenants are already operating in the immediate area, but the distance practical to travel for leased land is increasing.

Negotiating

Regardless of how the land is offered or placed on the market, a negotiating process is required because the landowner and prospective tenant must reach consensus on an agreement that can contain numerous terms and conditions. If agreement can't be reached, then another prospective tenant or landowner must be found. Often, the willingness to reach agreement on the part of either the landowner or prospective tenant is influenced by the supply and demand for land in the local area.

The negotiation process can be assisted by referring to a previous agreement or sample agreement. For more information, see *Sample Agreement* on page 31 of this publication. The following is a brief outline of important terms of a lease agreement.

Important Terms of a Lease Agreement

A satisfactory agreement contains adequate provisions for governing the lease. It's agreed to by both the landowner and the tenant. Lease agreements should be in a written form and include all of the important terms and conditions. A written agreement serves as a reference in case of disputes and helps both landowners and tenants reach a clear understanding. The following is a list of issues that should be discussed by both landowner and tenant during the process of negotiating a lease.

Names and Addresses of the Landowner and the Tenant

Name and address information should be complete and current.

Description of Property to be Rented

The agreement must specify the legal description of the land. Any buildings or areas that are to be excluded from the agreement must be specified.

Lease Length

The agreement must state the duration of the lease, including the dates it commences and terminates. Since economic conditions may change, agreements in excess of three years should provide for a periodic review of the essential terms.

Amount and Payment of Rent

The rent payable for leased land is usually a share of the crop or a cash payment. Negotiation and agreement are the final determinants of the amount of rent. A variety of budgeting techniques can be used to guide the negotiation process. For more information on establishing a rental rate, see page 11.

The amount of rent and the payment schedule must be stated in the written agreement. The landowner should be given the right to repossess and occupy the land if the tenant fails to make the payments according to the schedule outlined in the agreement.

Responsibility for Property Taxes

Unless otherwise specified in the written agreement, taxes are the responsibility of the landowner.

Compensation for Repairs to Buildings, Fences and Improvements

The written agreement should state who is responsible for repairing buildings, fences and other improvements, and how the expenses are to be shared. A common practice is to have the tenant responsible for all minor repairs. Providing there's prior approval, the landowner can reimburse the tenant for improvement costs that have a lasting benefit that's longer than the term of the lease.

Compensation for Major Improvements

Provisions should be made in the lease to compensate the tenant for major improvements which extend beyond the length of, or termination of, the lease. Major improvements include building and fence construction, erosion control, water development, and clearing and breaking of land (in some cases the breaking of hay or pasture sod). Tenants are usually required to obtain written permission from the landowner before making

major improvements. It's also important to outline how the value of improvements is to be determined and when compensation is to be made. In some cases, the tenant is given a period of free or reduced rent. A payment in cash is another option.

Rights to Assign or Sublet the Lease

The written lease should contain a clause that prevents the tenant from subletting or assigning the lease to another individual, without the written consent of the landowner.

Production Practices and Management Decisions

The written agreement should specify the production and management practices to which the landowner and tenant have agreed.

Crop rotation

The landowner may negotiate with the tenant to follow a prescribed cropping rotation which includes a specified proportion of cereals, oilseeds, summer fallow or forage crops. It is particularly important that there is a clear understanding as to whether the land is to be in stubble, cultivation or forage at the end of the lease. To encourage the tenant to fulfil this commitment, a penalty that is payable to the landowner when the lease is terminated or renewed can be specified. A similar compensation should be made to the tenant if the requirements are exceeded. The amount of compensation is a matter of negotiation between the landowner and tenant. It should reflect the loss or gain created by the change from the agreed cropping rotation.

Cropping and marketing decisions

Cropping decisions, the use of fertilizer and chemicals, and in the case of crop share agreements, crop insurance, Canadian Wheat Board requirements, non-Board options, and the delivery and sale of grain should be covered in drawing up a lease agreement.

See page 24 for information regarding marketing through the Canadian Wheat Board.

See page 25 for information on crop insurance.

Straw

The lease agreement should state if the straw is to be left on the land, or if it can be removed and under what conditions it can be removed.

Fall grazing

An agreement should be reached as to whether the tenant is able to graze livestock on the cropland in the fall after crops are harvested.

Responsibility for Grain Storage

The written agreement should state the minimum amount of grain storage, if any, to be provided by the landowner.

Grain or Equipment Stored on Land at the Commencement and Termination of the Lease

The written agreement should specify how long undelivered grain can be stored on the leased land without storage charges. Similarly, the storage of equipment or other items left on the land by the landowner or tenant should be addressed in the agreement.

Right of Entry

The landowner, or a representative of the landowner, should have the right to inspect the leased land and to remove grain stored on the land at the commencement of the lease. Similarly, the tenant should be able to remove grain after the termination of the lease.

To prepare the land for the next crop, an incoming tenant, purchaser or landowner should have the right to enter onto the land after the harvest in the last year of an agreement.

Termination

The agreement should specify the conditions under which the agreement can be terminated. Farming practices that don't meet the agreed terms or a failure to pay rent are normally included as conditions for termination of a lease.

Arbitration

It's important to include an arbitration clause in the written agreement. This covers any disagreement that might arise and can't be resolved

by the landowner and tenant. One alternative is to refer the disagreement to a third party who would act as an arbitrator. Certified arbitrators and mediators are available in Alberta. (See Appendix III.)

A second alternative is to provide for a board of three individuals. One member of the board is chosen by each party and a third selected by the two so chosen.

These approaches are usually preferable to a court case which can be very costly.

Option to Buy

The landowner may also give the tenant the option to buy the land, at a specified price, at some time during the lease. Care must be taken when the agreement provides for rental payments to be applied to the purchase of the land. This type of agreement results in income tax consequences as rental payments are an expense to a tenant and income to a landowner. Payments for a land purchase don't have the same consequences. Consult an accountant before undertaking this type of arrangement.

Another alternative is called a "right of first refusal." This option stipulates that should the landowner ever wish to sell the land, the tenant is given the right to buy or lease the land at the same terms offered by another purchaser or lessee, within a certain time frame. Remember that right of first refusal can be viewed as a restriction by some perspective buyers. This could result in a reduction of sale value. On termination of the present lease, a right of first refusal may be offered on a subsequent lease. This gives the tenant the right to obtain a new lease by matching terms offered by other prospective tenants.

Compensation for Property Damages

Normally, the party who suffers a loss receives any compensation payable. For example, if a payment is made as a result of crop damage, the tenant would receive the entire amount in a cash rent agreement. In the case of a crop share, the compensation would be shared in the same proportion as the crop is shared.

In the case of capital damage or loss of land, the landowner receives the entire compensation. For oil and gas surface lease compensation, see below for the *Surface Leases* section.

Income Support Payments

The written agreement should clearly specify how income support payments, made under any government or marketing agency, are to be handled. Normally, the terms are different for a crop share and a cash lease.

Loss of Use of Land

Lease agreements might contain a clause that terminates the lease if certain natural disasters occur. For example, if the land was flooded and the tenant was unable to use the property, it would be unfair to insist that the tenant continue to pay the cash rent, unless the level of rent agreed to took into account the risk of periodic flooding.

Surface Leases

A lease that is granted to a utility or resource company for the purpose of drilling for oil or gas, constructing pipelines or building roadways is called a surface lease. Payment for such a lease has two parts; payment for the right to enter the land and a payment for adverse effect, inconvenience and nuisance. The payment for right of entry is usually a lump sum payment, paid in the first year. The payment for adverse effect is an annual payment, paid in each year of the lease. Normally, the payment for right of entry goes to the landlord and the annual payment is shared in some way between the landlord and tenant.

For example, if the oil company agreed to pay $15,000 in the first year, consisting of $12,000 for right of entry and a $3,000 annual compensation, the landlord gets the initial $12,000, plus some portion of the $3,000 payment in the first year, and in each of the following years of the lease. The lease agreement should identify how the compensation is to be shared. The need for communication between the landowner and the tenant during the negotiation of a new surface lease should also be provided for in the agreement.

Patented Crops

Lease agreements should spell out a process of communication and agreement before a tenant can enter into a second agreement or contract with a third party. This is particularly true when growing certain patented crops (e.g. transgenic canola). The lease agreement between the landowner and tenant should carefully examine any special rights over the crop grown or rights to the land on which the crop is grown. This a new and complex aspect of modern crop production. It has important implications to both landowners and tenants. For more details on this issue, see page 19.

Record Keeping

Landowners should consider including a clause requiring the tenant to keep records of the herbicides used and the patented crops grown on the land during the term of the lease. These records should be made available to the landowner during and at the termination of the lease.

The improper management of herbicides can have a detrimental impact on the productive value of the land, extending beyond the term of the lease. Unexpected environmental regulations might also require a record of herbicide use.

Environmental Hazards

Landowners should also consider including measures to monitor and correct damage to the land from the over application of manure, accidental spillage or dumping of pesticides or petroleum products, damage to riparian areas, or any activities that may cause environmental damage.

Liability

Both the landowner and tenant should consider liability insurance. They should consult with their respective insurance companies to determine if there is a need to carry liability insurance in respect to the land being leased and the activities being carried out on the land.

Property Insurance

Normally, insurance coverage on buildings on the land is the responsibility of the landowner.

Establishing a Rental Rate

Rental rates are largely established by market forces, the supply of and demand for rental land in a local area. Landowners and tenants, through a process of negotiation and bargaining, establish rental rates and conditions of a lease. Tradition has an influence on rents, particularly for crop share leases.

A significant amount of land is leased within families. True market forces may not always apply in these situations.

Prior to entering into a lease agreement, both parties should carefully prepare financial projections to estimate the dollar returns that can be expected.

Often, tenants must pay the going rate in an area or they will not obtain a lease. The tenant should make financial projections to determine if the income from the leased land can cover the costs while returning a reasonable amount for labor and machinery inputs.

Landowners should calculate how much return can be expected on their land investment.

For family situations, the tenant and the landowner should sit down together and calculate their respective returns to determine if the arrangement is fair or suitable to both parties.

There are a number of economic analysis techniques that landowners and tenants can use to assist them in determining and evaluating rental rates.

Contribution Approach

The contribution approach is a budgeting method that is used to test the fairness of a lease arrangement. This approach means each party to the arrangement shares the income from the land in the same portion as they contribute to the costs. Other things being equal, a tenant should receive a larger share if he accepts more risk or contributes more in the way of crop inputs, machinery and labor. By the same token, a landowner should receive a larger rent for more productive and higher valued land.

Contributions Approach for Crop Share Arrangements

The contributions approach is more commonly used to evaluate crop share arrangements. Tenants and landowners use this approach to determine a reasonable crop share and use this as background information for negotiating an agreement.

The contributions approach can also be used to estimate a reasonable change in the crop share ratio to reflect changes in the costs incurred by each party. It is used to answer the following questions. If the landowner pays one-third of the fertilizer and chemical costs, what's a reasonable crop share ratio? If the landowner supplies some machinery, what would be a reasonable crop share ratio?

The following worksheets show two examples of using the contributions approach to evaluate a crop share arrangement.

Cropland Rental Worksheet (Scenario #1 - Economic Cost Basis)

Assumptions:

- landowner pays the property taxes
- tenant pays all operating costs and supplies equipment and labor
- land valued at $875 per acre
- landowner's target return on land is four per cent (might also expect gain from long-term appreciation in land values)
- tenant's investment in equipment is $350 per acre (owned and leased land combined)
- tenant's target return on equipment investment is eight per cent (see *Machinery Ownership Costs*, page 14 for more detail on calculating depreciation and interest on investment in equipment).

Projected Expenses	Total $	Tenant $	Landowner $
		12	0
		30	0
		18	0
		15	
			7
		3	
		10	
		20 25	35
Total	175	133	42

Tenant's contribution $133/$175 X 100 = 76% = 75%

Landowner's contribution $42/$175 X 100 = 24% = 25%

This example calculates a crop share of 75 per cent for the tenant and 25 per cent for the landowner. This type of calculation should be considered as a guideline only. Some of the cost estimates are not precise. It's difficult to determine the value of the landowner's land investment as it varies with the market value of the land and the earnings rate target. The tenant's fixed costs for machinery and an allowance for labor and management are also difficult to determine. They also vary from situation to situation.

An alternate approach for using the Crop Rental Worksheet shown above is to use custom rates to cover the value of fuel, oil, repairs, labor, equipment depreciation and equipment investment interest. In some situations it may be easier to determine custom rates for the field operations than to calculate depreciation and interest on the tenant's equipment. Using custom rates provides a more standard cost than basing the cost on the specific machinery investment of the tenant. This approach estimates cost based on the work performed rather than on the tenant's specific set of equipment.

Cropland Rental Worksheet (Scenario #2 - Custom Rate Basis)

Assumptions:

- landowner pays the property taxes
- tenant pays all operating costs and supplies all the machinery and labor
- land valued at $875 per acre
- landowner's target return on land is four per cent (might also expect gain from long-term appreciation in land values)
- cost of cultivation, seeding and harvest based on custom rates

Projected Expenses	Total $	Tenant $	Landowner $
		12	0
		30	0
		18	0
		12 8 2 4 8 20	0
			7
		3	
		2	35
Total	161	119	42

Tenant's contribution

$119/$161 X 100 = 74% = 75%

Landowner's contribution

$42/$161 X 100 = 26% = 25%

In this example, scenario #1 and scenario #2 result in the same crop share. In any specific situation, they may not be the same. For example, if the tenant has a below "normal" machinery investment, then scenario #1 would calculate a lower crop share for the tenant. In this case, scenario #2 might result in a more equitable solution. Either of these worksheet approaches can be used to help assess a crop share arrangement.

Contributions Approach for Cash Leases

A crop share arrangement can also be used as a starting point for calculating a cash rental agreement. The potential income from a crop share should be discounted (reduced) by a factor of 10 to 20 per cent because a cash rental is normally paid before the crop is sold, while the income from a crop share rental is received as the crop is sold. Therefore, the crop share rental should be reduced by the amount of interest that a landowner gains by receiving the rental payments earlier. Another reason for a reduced rate is the landowner has less risk in a cash rental agreement. In a cash rental agreement, the landowner's income is fixed. In a crop share rental, the landowner's income fluctuates with crop yield and price.

Example of using the contributions approach for a cash lease calculation:

Landlord's expected income from a crop share lease — $180 per acre x 25% = $45 per acre

Landlord's discounted expected equivalent income from a cash lease — $45 per acre x 80% = $36 per acre
(a 20 per cent discount is applied in this example)

In this scenario the landowner might consider a cash rent of $36 per acre to be roughly equivalent to taking a 25 per cent crop share.

The Income Approach

The income approach is a budgeting method used to estimate the profit remaining after the expected returns and costs are accounted for. Each party calculates its expected profit from a lease, prior to agreement.

Tenant's Position (crop share)

A tenant can use the income approach to estimate the profit potential available from a lease arrangement. If land becomes available for lease, a tenant can estimate how much rent can be paid and determine if the returns are sufficient to provide a satisfactory return on machinery and labor inputs.

Example:

Expected income from the leased land – $180 per acre (net after marketing costs)

Estimated expenses

rental payment (25% crop share)	$45
seed	$12
fertilizer	$30
herbicide	$18
fuel and repairs	$15

Expected return for machinery, labor and risk $60 per acre

At this point the tenant must evaluate if the projected $60 return is adequate to compensate for labor and machinery ownership costs and risk.

Machinery Ownership Costs

Machinery costs are different for each tenant. In some cases, the additional leased land is small in relation to the total land base and the existing machinery line has excess capacity. In these situations, tenants tend to assign a small capital cost to their machinery as it applies to the leased land. In other situations, a tenant may have to acquire additional machinery in order to take on the additional leased land. This results in higher costs for machinery. In either case, tenants should consider a long-term evaluation of machinery capital and operating costs as it applies to the total land base of the operation rather than the short-term costs associated with only the leased land.

There are several techniques used to calculate the cost of owning machinery. These include:

(a) average cost calculation for depreciation and interest on investment
Depreciation = (replacement cost - salvage value)/years of ownership
Interest = (replacement cost + salvage value)/2 x interest rate

(b) capital budget calculation for ownership cost
Ownership cost = (purchase cost - discounted salvage value)/yrs ownership

(c) *Farm Operations Cost Guide* - This Alberta Agriculture, Food and Rural Development publication features calculated ownership costs for a variety of farm equipment.

(d) Machinery cost calculators are also available. See Alberta Agriculture, Food and Rural Development's website: *Ropin the Web*. Under Calculators, there's a more complex and accurate cost formula.

Labor Costs

Tenants should try to assess labor costs based on a reasonable estimate of the additional time required to farm the additional leased land. That's multiplied by a labor rate for an operator/manager (e.g. $12 to $15 per hour).

Risk Compensation

Fluctuating income, caused by yield and price variations, is a fact of life in crop production. Some of this risk can be offset with production practices, crop insurance and marketing practices. Tenants should allow for variation in income that is consistent with past experience. Ideally, a budgeted profit should be large enough to absorb at least a portion of any potential drop in income (e.g. five per cent of budgeted gross income).

Landowner's Position (crop share)

Landowners can use the income approach calculations to decide if their return is adequate. If it isn't, alternatives are to try to get a higher rent payment or consider selling the land and investing the proceeds in an alternate investment. Many landowners recognize that farm incomes tend to run in cycles. Often, they decide to ride out periods of low returns in anticipation of better rental income and capital appreciation of land values in the future.

Example:

Expected income from the lease (25% crop share)	$45
Estimated expenses: land taxes	$7
Expected return on land investment and risk	$38

With this information in hand, the landowner can evaluate how the expected $38 return per acre compares to placing the equivalent land investment into an alternate investment with a comparable degree of risk.

Example:

Return on investment from rental income	$38/ $875 = 4.3%
Anticipated long-term return from appreciation* of land value (assume 3%)	3.0%
Total return on land investment	7.3%

* Due to the capital gains exemption that's available on farmland, income from appreciation in land value results in a more favorable tax treatment than does rental income.

Income Approach for Cash Leases

Tenants and landowners can use the income approach for evaluating a proposed cash lease in the same manner as outlined for crop share leases (see previous section). The main differences are the degree of risk carried by the tenant and the landowner. For the tenant, the risk in a cash lease is higher than in a crop share lease. The degree of risk carried by a landowner is less in a cash lease than a crop share.

The Cash Flow Approach

Tenants and landowners should project the impact that a lease arrangement might have on their cash flow situation. Often, the cash flow situation experienced by one individual is different from that of someone else. For example, one landowner may have mortgage payments to make while another may not. One tenant may have machinery payments and another may not. A cash flow analysis shows the personal financial circumstances of a landowner or tenant, but doesn't necessarily represent the economic reality of the situation. For example, in a competitive situation, a landowner can't expect to earn more than a reasonable rate of return on his land (say, four per cent), even though he/she has mortgage payments of $100 per acre. Similarly, a tenant can't expect to earn more than a reasonable return on equipment investment even though there may be high finance payments.

Tenant's Position (crop share)

Example:

Expected cash sales from the leased land – $135 per acre ($180 per acre x 75% share)	
Estimated cash expenses:	
seed	$12
fertilizer	$30
herbicide	$18
fuel and repairs	$15
Expected net cash flow available to use for total farm debt servicing, family living and savings or growth	$60 per acre

The tenant must evaluate the projected net cash return in relation to the total farm cash flow commitments and long-term requirements. For example, a projected cash flow may look positive, but in the long-term it may still be inadequate to cover all of the economic costs (depreciation on machinery and return to labor) identified in the income approach (an economic analysis).

Landowner's Position (crop share)

Example:

Expected cash sales from sale of crop share ($180 x 25%)	$45
Estimated cash expenses: land taxes	$7
Expected net cash flow from land rent	$38

The landowner must evaluate the projected net cash return in relation to requirements like maintaining and replacing grain storage, upkeep and improvements to the land, and cash withdrawals for living and mortgage payments.

Legal Issues

A cropland lease is a significant legal document and many legal issues arise from a decision to enter into a cropland lease. Your lease can and should be tailored to your specific requirements, some of which may be different from those discussed in this publication. Before you sign a lease, you may wish to take it to your lawyer to make sure it meets your needs and wishes. The discussion in this publication is intended only to provide general information about the basics of a cropland lease and to highlight some of the other issues you should consider.

Since the repeal of the ***Landlord and Tenant Act***, there are no statutes which directly govern cropland leases (although there are various requirements in statutes such as the ***Land Titles Act*** and the ***Weed Control Act*** which affect cropland leases). The absence of a specific statute governing cropland leases means it's important to spell out the rights and obligations of both the landlord and tenant in the cropland lease.

Legal Enforceability of a Lease

The law makes a distinction between moral obligations and legal obligations. Generally, the courts only enforce legal obligations. Moral obligations are not legally binding. In order to make your lease legally enforceable, so you can obtain the assistance of the courts if you don't receive your rights under the lease, there are certain things you must do in a lease.

Even if you have a lease that's legally enforceable against the other party to the lease, you may not be able to enforce it against third parties, people other than the landlord or the tenant. For example, a tenant may be able to enforce a lease against the landlord, but not against the landlord's heirs if the landlord dies. Information about making a lease legally enforceable as far as possible against third parties is included in the discussion below.

Finally, if you don't personally know the other party, you may wish to have the person who witnessed the other party's signature swear an affidavit of execution. A form for the affidavit of execution is provided with the sample lease included in this publication.

Get It In Writing

A cropland lease should always be in writing. A lease for a term of more than three years must be in writing to be legally enforceable. However, it's a good idea to put any contract, including cropland leases for less than three years, in writing. Verbal agreements may be legally binding, but they are difficult to enforce in court. A problem arises as often it comes down to one party's word against the other's as to the exact terms of the contract. There are also good practical reasons for putting a lease in writing. These are discussed elsewhere in this publication.

Once a lease has been put in writing, any changes to the lease must also be in writing and signed by both the landlord and the tenant. The law says that oral changes to a written document aren't legally enforceable.

Preparing a Cropland Lease

Required Terms

A cropland lease is a contract. To be legally enforceable, it has to meet the standard requirements for any contract. These requirements are often referred to as the three Ps: parties, property and price. In the case of a cropland lease, the parties are the landlord and the tenant. The property is the property being leased by the landlord to the tenant. The price is the rent to be paid by the tenant. See the discussion under *Important Terms of a Lease Agreement* on page 7 for further information about these requirements.

Another legal requirement of a lease is it must contain "words of present demise." This is a statement saying that the landlord hereby leases certain property to the tenant. The sample lease provided with this publication contains appropriate wording.

Implied Terms

The *Land Titles Act* says that the following clauses are implied in any lease for a term of more than three years. These clauses are deemed to be included in the lease whether or not they are actually written in the document, unless the lease specifically says otherwise. These clauses are:

- the tenant will pay the rent, and any rates or taxes that he is responsible for, on time
- the tenant will keep the rented land and buildings in "good and tenantable repair," subject only to reasonable wear and tear, accidents, and damage from Acts of God such as fire or storm, and will return the land and buildings in that condition to the landlord at the end of the lease
- the landlord or his agent is entitled to inspect the leased land and buildings, and if there are any defects in the state of repair of the leased property, the landlord may require the tenant to make repairs within a reasonable time
- if the tenant fails to pay rent or perform any other obligation under the lease for two calendar months or more, including repairs required by the landlord, the landlord can take back the rented property from the tenant

If you don't want some or all of the above to apply to your lease, make sure the lease says so. However, they are reasonable things to include any lease, no matter how long the term is. You should consider adding them to the sample lease provided with this publication.

Additional Terms of the Lease

A cropland lease can contain many clauses in addition to the basic ones described above. Typically, these clauses deal with issues common to all leases, such as the circumstances under which the lease may be terminated, and issues specific to cropland leases, such as storage of grain. When preparing a lease, you should think carefully about all the situations that are likely to happen while the lease is in effect and what you want to be able to do in those situations. For example, someone will have to pay the input costs. Will that be the landlord or the tenant, or should the costs be shared between the landlord and the tenant? If the tenant fails to pay the rent on time, what rights will the landlord have? If the landlord sells the land, what rights will the tenant have? A number of these considerations are discussed in this publication under the heading, *Important Terms of a Lease Agreement* (page 7), but you should consider whether it's appropriate to include each of those items in your lease, and whether there are additional items that need to be included to suit your particular circumstances.

Writing Your Own Lease

If you are writing your own lease, here are some things to keep in mind.

- To be legally enforceable, each clause in a lease must be certain, in the legal sense of that word. That is, the clause must contain an actual agreement, not an "agreement to agree." An example of an agreement to agree is a clause saying that if the landlord consents during the term of the lease to the tenant making major improvements, the landlord and tenant will agree on the compensation to be paid to the tenant. That's not an actual agreement as to the amount of compensation to be paid. It's simply an agreement to agree, which is legally unenforceable. Similarly, a clause that says that the tenant will pay cash rent equivalent to the value of a specified number of bushels of grain may be legally unenforceable as there's no way to calculate with certainty the amount of the rent because grain prices vary from day to day and place to place. However, the clause is legally enforceable if it specifies that the price will be in accordance with the price for the same type of grain, at a particular market, on a particular day.
- Each clause must be written clearly enough to be understandable by someone who isn't a party to the lease, such as a judge. For example, if the clause contains contradictory statements, or is so vague that the meaning of the clause can't be understood by reading it, it may be legally unenforceable.
- Each clause must be clear enough so that it's understood the same way by both the landlord and the tenant. Often, the same words mean different things to different people. If a question arises about the proper interpretation of a lease, the first thing the judge or arbitrator looks at is the wording of the clause. If the wording seems clear to him, he may not look any farther, even if one party says that wasn't what he intended when he signed the lease.

Protecting Yourself as Tenant

Obtaining a Copy of the Landlord's Land Title

You should obtain a copy of the landlord's land title before signing the lease. This can be obtained through any registry company (see *Licence and Registry Services* in your local Yellow Pages). This allows you to make sure that everyone who is registered as an owner of the land signs the lease as landlord. It also lets you know whether there are any mortgages or other charges registered against the land that might affect your rights under the lease.

The Dower Act

Alberta's *Dower Act* says that for a lease of a term of more than three years, where the landlord lives on the land being leased and has a spouse, the landlord must obtain his spouse's consent to the lease. This is known as a dower consent.

If the requirement for dower consent applies, you should ensure that the landlord's spouse executes the dower consent. This is generally done before a lawyer. If the landlord says that he doesn't have a spouse or hasn't lived on the leased lands since his marriage, it's still a good idea to have the landlord swear a dower affidavit. The affidavit states that either the landlord isn't married or that he hasn't lived on the leased land since his marriage. Forms for the dower consent and the dower affidavit are included with the sample lease in this publication.

The *Dower Act* isn't clear as to whether dower consent is required for leases of three years or less, so it would be prudent to obtain a dower consent or a dower affidavit from your landlord for all leases.

Registration of the Lease

Registering a lease at the Land Titles office protects you against loss of your rights to most third parties. An example of this is when the landlord sells the leased land to someone else. You may register a lease of more than three years directly against the landlord's land title. If the lease is for three years or less, you can still register the lease against the landlord's title through use of a caveat.

A form for the caveat is included with the sample lease in this publication.

Knowing Your Statutory Obligations

There are various statutes which create legal obligations for anyone who farms land in Alberta, including tenants. For example, the *Weed Control Act* requires you to destroy restricted weeds, control noxious weeds and prevent the spreading of nuisance weeds. The *Soil Conservation Act* says that you must take appropriate measures to prevent soil loss or deterioration. If your farming practices fail to meet the standards in these acts or seriously affect the productivity of the land in other ways, you may find yourself subject to supervision by an agricultural fieldman and required to work with him to restore the productivity of the land. Further, certain agricultural chemicals must be used in accordance with the *Environmental Protection and Enhancement Act* and regulations. Other statutes that may affect you include the *Agricultural Pests Act* and the *Agricultural Operations Practices Act*. If you wish to know more about your statutory obligations, contact your lawyer.

Protecting Yourself as Landlord

Legally Protected Crops

Some suppliers of genetically modified seeds require a farmer to enter into a contract with them before they can purchase the genetically modified seed. One such contract is Monsanto's *Technology Use Agreement*. It must be signed before Monsanto will sell the farmer its Roundup-Ready® canola. The *Technology Use Agreement* creates significant obligations for the farmer, including an obligation not to save any seed produced from the initial crop for planting in the next crop season. A tenant who signs the *Technology Use Agreement* and then violates it finds himself open to significant reprisals, including possible destruction of the crop. The *Technology Use Agreement* also requires the tenant to obtain permission from the landlord for inspection of the fields and storage bins for three years following the year in which the Roundup-Ready® canola is planted. Therefore, you may wish to include a clause in your lease dealing with genetically modified crops.

Some varieties of crops are also protected under the federal *Plant Breeders' Rights Act*. Typically, the holder of the plant breeders' rights enters into a licence agreement with the person who wishes to plant a protected variety. Again, you may wish to include a clause in your lease dealing with protected varieties of crops.

Landlord's Liability for Tenant's Actions

Various provincial statutes such as the *Weed Control Act*, the *Soil Conservation Act* and the *Environmental Protection and Enhancement Act* create potential liability to you for the actions of your tenant. This includes possible fines for offences under the Acts and, in extreme cases, loss of possession and control of your land. In addition, you may be sued by someone who has suffered loss or damage as a result of something your tenant did. The lawsuit may not be successful, but you will have to spend time and money to defend it.

There are a number of ways you can protect yourself against these risks. One way is to include clauses in your lease saying that the tenant will comply with the laws of Alberta, pay you back for any expenses you have as a result of wrongdoing by your tenant, and allow you to inspect the leased land and buildings from time to time. You may also want to include a clause requiring your tenant to have appropriate insurance coverage.

Priority Claims to Crops and Proceeds of Crops

There are various federal and provincial statutes that may affect the tenant's ability to pay his rent, whether the rent is payable as a share of the crop or in cash. These statutes give priority to a third party for crops or the proceeds of the sale of crops.

For example, Alberta's *Crop Liens Priorities Act* says that claims for payment of amounts owing to the Agriculture Financial Services Corporation or to the board of directors of an irrigation district have priority over any other claims, liens or encumbrances on the crop. Alberta's *Personal Property Security Act* allows a tenant to grant a security interest in growing crops. This has priority over a landlord's claim to the proceeds of the crops, as long as the security agreement is registered at the

Personal Property Registry. These statutes are of less concern in a crop share lease than in other types of cropland leases, because the *Crop Payments Act* says that in a crop share lease the landlord's share of the crop (to a maximum of 1/3 of the crop) becomes his property as soon as the crop is sown. Therefore, any security interest granted by the tenant or any claim arising under the *Crop Liens Priorities Act* after the crop is sown only applies to the tenant's share of the crop.

The federal *Bank Act* gives chartered banks priority to crops when they take a security interest in those crops. Federal legislation generally overrides provincial legislation. Therefore, the *Crop Payments Act* may not give you any protection even if the lease is a crop share lease.

If you have any concerns about your tenant's ability to pay rent, you may wish to ask for information about how he intends to finance his farming operation or pay his rent, prior to leasing the land to him. You may want to ask your lawyer about using the *Personal Properties Security Act* to establish a security interest in the tenant's crops or inventory as protection in case the tenant defaults on a rental payment.

Tax Considerations

A cropland lease may have significant tax implications for the landlord, tenant or both. For example, the landlord may lose the ability to do a tax-free rollover of his farm land to his children if he leases the land. You should consult your accountant and, if appropriate, your lawyer about the tax implications of your lease before you sign it. See the *Taxation Issues* section on page 21.

Conclusion

The above discussion describes some of the legal issues that commonly arise in a cropland lease. It isn't an exhaustive list of all of those issues or meant to be a substitute for obtaining advice from qualified professionals.

Like any contract, a cropland lease should describe the rights and obligations of the parties to the lease. How detailed those descriptions are is a matter of choice. A cropland lease may be basic, containing only the bare minimum legal requirements, or detailed, making provision for all reasonably foreseeable eventualities. When deciding whether to include a particular provision in your lease, you should ask yourself how much risk there is and how you would be affected if the situation arose and there was nothing in the lease to govern it. Before negotiating, preparing or signing a cropland lease you may wish to obtain further advice from your lawyer, accountant and farm management specialist.

Taxation Issues

Leases and The Income Tax Act

This section deals with portions of the Income Tax Act that apply to leasing farmland. This information isn't an interpretation of the Act, but is intended to bring various tax considerations and implications of leasing land to the attention of landlords and tenants. It's recommended that inquiries be directed to accountants, lawyers, tax consultants or Alberta Agriculture, Food and Rural Development's farm management specialists.

Income and Expense Considerations

Cash Rent Agreements

If the lease is a cash agreement, the amount of rent paid by the tenant may be claimed as a farm expense. The rent received by the landlord is declared as rental income, and not farm income.

Crop Share Rent Agreements

Crop share payments are, under the *Income Tax Act*, treated as rental income to the landlord, not farm income. In practice, many landlords report crop share income as farm income and continue to file a farm statement. Canada Customs and Revenue Agency's major concern is not the type of income reported, but rather a landlord's eligibility as an active farmer for the family farm rollover provision and the $500,000 capital gains exemption. This topic is discussed in more detail later in this section.

The confusion regarding this income treatment is highlighted in the eligibility for government programs. For example, crop share income qualifies for federal support programs such as Net Income Stabilization Account (NISA) and the Agricultural Income Disaster Assistance (AIDA), but not the Alberta Farm Income Disaster Program (FIDP).

If the tenant includes the gross value of the entire crop on his/her tax return, then the payments made to the landlord are an expense. The tenant may claim any repair expenses incurred in maintaining the landlord's property.

Rollover Provision

The *Income Tax Act* provides for a rollover of capital gain on farmland and depreciable property from a landlord to his/her child. The rules require that before the transfer the property was used principally in the business of farming by the landlord, his/her spouse or any of their children of which one was actively engaged on a regular and continuous basis. The Canada Customs and Revenue Agency has interpreted used principally to indicate that if land has been farmed for a longer period than rented, the land will qualify for the family farm rollover provision. Prior to 1992, the requirement wasn't a historical use test, but rather required the land to be used in the business of farming immediately before the transfer. For a person to be classified as actively engaged, the individual must be responsible for the managerial decisions and be considered a risk taker. The Canada Customs and Revenue Agency has deemed that any cash rent and many crop share arrangements place the landlord in a non-active position. The most notable exception would be in the instance that the land is rented to a child of the landlord. A child is defined in the *Income Tax Act* to

include a taxpayer's child, grandchild, great grandchild, son-in-law, daughter-in-law, adopted and step-children, plus a wholly dependent child.

The 1992 amendment means that if the time period the landlord, their spouse or their children have actively farmed the property exceeds the rental period, a rollover is allowed.

The ability to take farmland that has been rented longer than farmed and farm it actively for only one or two years to have the property meet the new rollover rules, appears to have been dispensed. Remember, the time the property is actively farmed must exceed the time the property is rented.

To maintain an active farming position and qualify for the rollover, a farmer may custom hire the farming operation or consider forming alternative business arrangements, such as joint ventures or partnerships.

The $500,000 Lifetime Capital Gains Exemption

The Lifetime Capital Gains Exemption is available to every individual resident in Canada. Property that qualifies for the $500,000 exemption includes:

- farmland
- buildings
- machinery
- eligible capital property (quotas)
- partnership interest
- corporate shares

The definition of "qualified property" requires the property to be used by the farmer, spouse, child, family farm partnership, corporation or parents in the course of carrying on a farm business. For this definition, if property is used by the appropriate person in the year of sale, or for any five-year period prior to the year of sale, the property qualifies for the $500,000 exemption.

This provision, whereby farmland can qualify for the $500,000 exemption as long as it has been farmed for at least five years prior to the year of disposition, is an important rule. Under this rule, a farmer could have rented his land for the last 10 years and qualify for the capital gains exemption, as long as he meets the five-year test.

A taxpayer must also familiarize himself with the other rules that affect the availability of the capital gains exemption. For example, amounts deducted as cumulative net investment losses (CNIL) reduce the availability of the capital gains exemption. If you intend to rely on the capital gains exemption, check with your tax advisor to ensure that you are eligible.

Also, if you don't properly report your capital gain for the appropriate taxation year on a timely basis, you lose the ability to obtain a tax free capital gain. Proper compliance under the *Income Tax Act* is crucial.

There are other special rules for property acquired after June 17, 1987 that require a holding period of at least 24 months before disposition of the property and a gross revenue test. If land has been acquired since June 17, 1987 from a parent and the landlord (child) has never farmed, and the parents have met the two-year gross revenue test during their ownership period, the land continues to qualify for the $500,000 exemption. This rule is important as many Alberta landlords have acquired their property through inheritance and can lease their property without them being actively involved in the business of farming.

To understand how these rules apply in your own situation, please consult *Tax Management Strategies for Alberta Farmers*, Agdex 837. It describes the $500,000 exemption and the alternative minimum tax in more detail.

Before relying on the capital gains exemption to shelter your taxable income, examine the effect of the alternative minimum tax calculation. In circumstances where the proceeds received aren't significant, the minimum tax liability will not be triggered.

Non-resident Withholding Tax

Cash Rent Agreements

If the landlord is a non-resident of Canada, the tenant must withhold 25 per cent of the rent payable and forward this to the Canada Customs and Revenue Agency. (Note: This can be reduced when a tax treaty between Canada and the country of residence has been executed. For example, if the non-resident landlord resides in the United States, the amount of tax withheld is 15 per cent, rather than 25 per cent.) The withholder (the tenant) must forward the tax to the district taxation office by the 15th day of the month following, the month when rent payment was made.

Crop Share Agreements

If the lease is a crop share agreement, the share of revenues from production must be reduced by the appropriate amount of withholding tax. For instance, when grain produced from the rented land is sold to a major grain company with payments allocated to the landlord and tenant, the withholding tax is deducted from the non-resident's cheque by the grain company. The tenant is required to indicate to the grain purchaser that the landlord is a non-resident of Canada. If production is sold to a small business, like a feedlot, it may be advisable for the tenant to take full payment for the production. The tenant then deducts the withholding tax from the landlord's share of the revenues. The withholding tax must be sent to the Canada Customs and Revenue Agency by the 15th day of the following month. An account is established with the Canada Customs and Revenue Agency that includes the names of all parties involved, the type of payment (in this case rent), and the month that rent was paid and tax withheld.

Consequences of Failing to Comply

Should the tenant not forward the withholding tax, the Canada Customs and Revenue Agency will attempt to collect the tax from the landlord. If the non-Canadian resident landlord doesn't pay this tax, the tenant is held responsible. As well, the tenant could be subject to fines and penalties.

GST and Leasing Farmland

How the rent is paid on leased farmland makes a difference as to whether the landlord charges GST. The traditional crop-share leasing agreement is zero-rated. This means that if the landlord receives payment as a percentage of the crop grown, no GST is required to be paid or collected.

In a cash rental situation, paying GST depends on whether the landlord is a GST registrant. A registered landlord is required to charge the tenant GST on the rental fee. Then, if the tenant is registered, the GST paid can be treated as an input tax credit and may be refunded. On the other hand, if the landlord isn't registered, the tax doesn't need to be included in the rent. Under GST legislation, if gross annual business income is less than $30,000 the small trader's exemption applies and the landlord isn't required to register for GST purposes. However, if a landowner was previously a GST registrant and now has less than $30,000 of business income, it isn't practical to de-register. De-registering triggers a deemed sale of the farmland for GST purposes and seven per cent GST would be paid by the landowner on the fair market value of the land.

Cash leases don't have to be rewritten to incorporate the tenant's requirements to pay GST. All existing and new contracts are subject to GST legislation regulations.

With regards to oil company surface leases, seismic testing and mineral leases, the Canada Customs and Revenue Agency has confirmed that farmers who receive such payments from an oil company will not have GST attached.

GST treatment of income from pipeline leasing isn't as clear. Only pipelines used to transport to central processing locations are zero-rated. Pipelines used for distribution are deemed taxable. (Note: It appears that the industry is treating both as zero-rated.)

Government Programs

Canadian Wheat Board Act

The Canadian Wheat Board (CWB) is the sole marketer of Canadian wheat and barley for export and/or human consumption within the designated area. The designated area consists of Manitoba, Saskatchewan, Alberta and the area known as the Peace River block of British Columbia. Producers are able to sell grains other than wheat and barley on the open market. Wheat and barley can also be sold on the open market within Canada, as long as they aren't used for human consumption. The marketing rules as set out in the Canadian Wheat Board Act can have an effect on crop share leases.

Definitions

Under section 26 of the ***Canadian Wheat Board Act*** the Board is required to issue a permit book authorizing delivery of grain produced on the land comprising the farm of the producer.

- actual producer – a producer actually engaged in the production of grain.
- producer – includes the actual producer plus anyone else entitled to a share of the grain grown by the actual producer, i.e. landlord, vendor or mortgage holder.
- landlord – a party who rents land to an actual producer under a crop share agreement. If the land is rented on a cash basis the landlord isn't entitled to appear on the permit book.

In order to sell grain to the CWB a producer must have a permit book. Only a producer may have a permit book. A landlord who rents land on a crop share basis will be listed on an actual producer's permit book as a producer who is entitled to receive a share of the grain production. The actual producer has a prior right to the permit book, but shall make the book available, on request, to all other producers who have a right to deliver grain under that book.

Producers are allowed to offer their grain for sale to the CWB four times during the year. The CWB accepts all or part of that grain based on its sales program. Once the grain is accepted by the CWB, it will call it forward throughout the year as it's required. If grain is offered for sale, accepted by the CWB and then not delivered, a monetary penalty can be applied as liquidated damages. It's possible for a landlord to contract their grain separately from the actual producer.

When lease agreements expire and tenants cease to farm, they are eligible to apply to the CWB for a special permit to deliver their share of the remaining grain.

Where landlords sell their property and no longer farm or cash rent their property, they are no longer eligible to be listed on a permit book, but are eligible for a special permit to deliver their remaining grain. If the landlord rents the land on a crop share basis to a new tenant, the remaining grain can be offered to the CWB on the new tenants permit book.

An agreement between the landlord and tenant should clearly identify the responsibility for deciding how the crop will be marketed and delivered. This includes deciding whether the grain

is sold to the CWB or the open market. If it's sold to the CWB, who decides when it will be offered for sale? If it will be sold on the open market, who decides when it will be sold and at what price? Usually, the tenant is responsible for the delivery of the grain, but the landlord may wish to specify how their share of the grain is sold.

Leases and Hail and Crop Insurance

Insurance and risk go hand in hand. In Alberta, all-risk crop insurance can only be purchased by actual farm operators.

This means that landlords will not participate in a crop insurance payout in the case of a crop failure, even though the lease agreement is based on a shared risk concept.

However, there's a way landlords and tenants can make an arrangement to suit both parties. The lease can contain a clause that spells out how the crop insurance cheque will be split between the landlord and the tenant. For example, they may agree to split the cost of the premium and share in the benefits according to the original crop share split.

How the parties decide to handle this depends on the individuals involved. Insurance premiums are dependent on the risk area, crop, coverage level and claim history. Landlords should realize that each tenant that farms their land may be in a different standing with Agriculture Financial Services Corporation. As such, the landlord should weigh the insurance decision based on each individual's record with the insurance corporation.

An insurance feature that may interest landlords in insurance discussions with tenants is that the coverage for damage is related to the entire acreage of a particular crop seeded by the tenant. Suppose a tenant has four quarters of canola, three of which are owned and one that is rented. If the rented crop is wiped out, but the other three are bumper yields, the crop insurance assessment would look at all the canola. It's possible that the overall yield wouldn't trigger a payout. The landlord on a crop share basis would receive nothing, even though insurance was purchased and the crop lost. Hail insurance, however, is crop specific. The purchaser is able to receive compensation regardless of the tenant's production on other land.

Straight hail insurance is made available by the corporation and can be purchased by landlords and operators as long as the total dollar value of the insurance doesn't exceed a specified amount. This is a separate program that isn't associated with the all-risk crop insurance program.

For more information on crop insurance in Alberta, contact your local office of the Insurance Division at Agriculture Financial Services Corporation. These offices can be contacted through the Government of Alberta, toll-free RITE switchboard at 310-0000.

An Overview of Some Common Agreements

Crop Share Lease Agreements

The crop share lease agreement is a common form of lease arrangement in Alberta. Under this arrangement the landowner takes a share of the crop as the rental payment. The share of crop received by the landowner varies depending on how it was negotiated between the landowner and tenant.

Traditionally, a one-third/two thirds arrangement was the standard, with the landowner providing the land, paying the taxes and supplying some or all of the grain storage. The tenant's contribution was providing the labor, equipment and all of the inputs.

Today, a more common arrangement sees the landowner paying a share (usually one-third) of input costs for seed, fertilizer and herbicide in exchange for one-third of the crop. This arrangement results in a more equitable sharing of the costs and returns from the income stimulating inputs. It also encourages the tenant to use modern farming methods.

In situations where a landowner doesn't want to be involved in the purchase of inputs, the crop share may be adjusted to provide 20 or 25 per cent of the crop to the landowner.

The process of negotiating a crop share arrangement can be based on the guidelines presented in the previous sections of this publication and the sample lease agreement information on page 31.

There are both advantages and disadvantages that specifically apply to crop share leases.

Advantages

The landowner and tenant share the risks and rewards associated with grain prices, quotas and yields in the same proportion as they share the crop.

The rent varies directly with the value of production and is paid as the crop is sold, rather than in advance.

The landowner may pay part of the crop inputs such as fertilizer and chemicals.

An inexperienced tenant may be able to utilize the management expertise of a landowner with farming experience.

In the long run, providing the tenant is a good manager, a landowner may make more money on a crop share arrangement than other arrangements.

The income received by a landlord from a crop share agreement is eligible for Net Income Stabilization Account (NISA) participation. The NISA program allows a farmer to contribute three per cent of eligible net sales to a special fund where the federal government matches the deposit and pays a three per cent interest bonus on NISA fund balance.

A landowner's expenses and income is usually treated as farming income and expense.

Disadvantages

The results of a tenant's superior management are shared with the landowner.

The landowner may wish to influence management decisions on the leased land.

The landowner may make less money on a crop share arrangement as compared to other arrangements, if the tenant is a poor manager.

There's more administration and problems with a crop share arrangement than other lease arrangements. These can include verifying production, quotas, cash advances, feed fed to livestock, crop insurance, joint purchase of inputs, and the storage and handling of the crop.

The integrity of the tenant is extremely important to the landowner.

Cash Lease Agreements

Cash lease agreements are common in Alberta. Under this type of arrangement the tenant agrees to make predetermined cash payments to the landowner for the use of the land. Tenants usually pay all production expenses except land taxes, building insurance and major improvements to the land. All of the crop produced belongs to the tenant who is free to market or use it as he wishes. This type of lease is well suited to landowners who aren't familiar with agricultural practices, can't or don't want to stay in touch with the production and harvesting progress, or want a predictable income from their land. A cash lease may enable a tenant to turn management skills into more profits than is possible with a crop share lease. Along with the potential for more profit comes the responsibility of assuming more risk.

Cash lease agreements are relatively easy to administer. As the crop belongs to the tenant, the need for determining an accurate yield or dividing the income from the sale of grain isn't required.

The process of negotiating a cash lease agreement can be based on the guidelines presented in the previous sections of this publication and the sample lease agreement information shown on page 31.

In addition to negotiating the amount of the cash rent to be paid, it's necessary to establish when the rent is to be paid. Payment may be required at the beginning of the crop season or in two installments, one in the spring and another in the fall.

There are a number of advantages and disadvantages associated with cash lease agreements.

Advantages

The landowner receives a known and fixed return.

The possibility for disagreement between landowner and tenant is reduced as compared to a crop share agreement.

The landowner doesn't have to be concerned with the marketing of the crop.

Tenants generally are free to make management decisions that are similar to those they implement on their own land.

Tenants have more incentive to strive for high yields.

Tenant receives the benefit of unexpected increases in crop prices or yields.

Accurate yield determination is of less importance as there's no need to divide the crop production between the landowner and tenant.

There's no need to bin or handle the crop from the leased land separately.

Disadvantages

The landowner isn't able to benefit from unexpected increases in crop prices or yields.

The landowner is likely to realize less income than from a crop share lease over the lifetime of the lease.

The landowner is less able to manage cash flow from revenue and expenses for income tax purposes than with a crop share lease.

Since cash rent is influenced by crop prices that can change significantly from one year to the next, landowners and tenants are reluctant to enter into

long-term price agreements. There may be a need to adjust the price periodically during the life of the agreement.

A GST registered landowner is required to charge the tenant GST on the rent paid.

The tenant requires additional operating funds to pay the rent.

The tenant assumes all of the risk from unpredictable yields, prices and input costs.

Cash lease agreements tend to be short-term. For this reason, tenants are reluctant to use farming practices that benefit the land in the long-term.

Flexible Cash Lease Agreements

Flexible cash leases are essentially a cash lease with provisions allowing the rent payment to vary with changes in production or price, or both. A typical flexible cash rent sets the rent payment equal to a predetermined number of bushels (or tonnes) of a specified crop at a price in a specified market at a specified time. For example, a rent payment in a flexible cash agreement might be equal to 17 bushels of barley multiplied by the price in Lethbridge on the 15th day of November. In some cases, a combination of crop prices might be used as an index for adjusting the base cash rent. Another alternative might be to agree on a base cash rent and adjust that amount upward if gross income from crops grown on the land exceeds a certain level. For example, $30 per acre plus one-third of the gross value of production over $180 per acre. The number of bushels, price and base cash rent used in the agreement are arrived at through negotiation between the landowner and tenant. The process of negotiating a cash lease arrangement can be based on the guidelines presented in the previous sections of this publication and the information in the sample lease agreement on page 31.

Flexible cash leases, where the rent is adjusted with changing yields, can be complex to administer because accurate production records are required. It's advisable to keep the procedure for adjusting the rent simple. It may be better to use a crop share lease, rather than a complex system which involves a cash rent based on both production and price changes.

Custom Farming Agreements

Sometimes a landowner wishes to remain classified as a farmer and retain close control of the farming business, but not be actively involved in the actual field work. This happens when the landowner wants to reduce his workload on the farm or limit the capital investment in modern equipment.

There are several tax and estate planning options available to farmers, but not landowners, who receive rental income. For example, a farmer, but not a landowner, is able to make contributions to the Canada Pension Plan. Also, land that's leased to anyone other than a spouse or child may not qualify for a rollover to a child. These rules are complex and a lawyer, accountant or farm management specialist should be consulted before entering into a custom farming agreement. For more information, see the taxation section on page 21.

A custom farming arrangement is a situation where the landowner makes all of the farming decisions, arranges for and pays for the purchase of all inputs, and receives all of the income from any sales. The landowner hires a custom operator to do some or all of the operations requiring machinery. The landowner also pays a custom fee to the custom operator upon the completion of each operation.

A variation to a custom farming agreement sees the landowner pay the custom operator a basic lump sum by a certain date, plus a bonus at the end of the year that may be based on net income.

Joint Venture Farming Agreements

Joint venture farming agreements allow both parties to be considered farmers. The landowner supplies land to the joint venture and the other party supplies machinery, machinery operating costs and labor. The two parties then share the crop sales on a percentage basis and also share the input costs (seed, fertilizer, chemicals, and crop insurance) on the same basis. Both parties can benefit from crop insurance, NISA, the Canada Pension Plan and other programs.

Sample Agreement

The information, instructions and sample agreement in this section were prepared by Alberta Agriculture, Food and Rural Development's Agricultural Business Management Branch, with legal counsel from the law firm of Wilson and Hurlburt.

This section is provided to assist landlords and tenants in preparing a written lease agreement. For more detailed information on negotiating a lease agreement, please refer to the previous sections of this publication and/or seek additional information from an Alberta Agriculture, Food and Rural Development farm management specialist.

It's impossible to include all provisions to cover every situation. Thus, this sample agreement is for use as a guide only. All agreements should be discussed with a lawyer and/or an accountant before they are signed.

The information contained in this publication should not be considered as either an interpretation or complete coverage of all the laws affecting land rental arrangements, nor the implications of the *Income Tax Act*. The Government of Alberta assumes no responsibility towards persons using it as such.

The following steps should be taken in completing a lease agreement.

1. Read the previous sections of this publication. Study the sample clauses carefully to determine the impacts on your situation. Consult a farm management specialist and your lawyer.
2. Negotiate a rental rate or crop share acceptable to both parties. Referring to the section in this publication titled *Establishing a Rental Rate* or consulting with a farm management specialist will help to ensure that an equitable arrangement is established.
3. If possible, the landlord and tenant should meet to discuss the terms of a prospective lease and decide which clauses are needed and which ones are not. Make changes where desired and have one party draft the prospective agreement.
4. Each party should then consult their own lawyer to determine the final wording to meet the needs of both parties. Both parties sign the final copy in duplicate.
5. The landlord should ensure that the requirements of the *Dower Act* are fulfiled.
6. Complete an *Affidavit of Execution*. This is confirmation by the witness that the specified individuals completed the agreement.
7. If it's required now, or when it's needed in the future, the tenant and landlord can complete a *Consent to Make Major Improvements* form prior to making major improvements on the leased land.
8. A tenant may wish to ensure the agreement remains in effect if the land is sold to another party. To do this, the tenant can file a caveat with the registrar of land titles.

9. If the lease contains a renewal clause, the landlord and tenant can use the *Lease Renewal* form, the *Dower Act Consent of Spouse* form, and the *Affidavit of Execution* form to renew the lease agreement. All clauses in the lease agreement should be reviewed at this time and adjusted as agreed. A caveat would have to be re-filed for the new lease.
10. The *Withdrawal and Discharge of Caveat* form is used to remove a caveat from the cert title.

By substituting the appropriate clause, the following sample lease agreement can be used for a crop share arrangement, a cash lease arrangement or a flexible cash arrangement. Most of the clauses are the same, regardless of the type of arrangement.

Sample Lease Agreement

This lease made in duplicate this _____ day of _____ AD 20 _____ between:

_____ of _____

Landlord's name *Landlord's address*
(the Landlord)

and

_____ of _____

Tenant's name *Tenant's address*
(the Tenant)

IN CONSIDERATION of the rents, covenants, and agreements [illegible] the Tenant contained in this lease, the Landlord agrees to lease [illegible] Tenant the property described below, to occupy and use for the [illegible] out in this lease. The Tenant hereby accepts the lease of the pr[illegible] described below and agrees to hold the property as tenant, subject to the conditions, restrictions and covenants contained in this lease.

1.0 Leased Property

The Landlord hereby leases to the Tenant the land and building[illegible]ibed below (collectively, the Leased Property).

a) Land (the Leased Land):

b) Buildings (the Leased Buildings):

Insert legal description of the land

It's important to clearly identify the land that the tenant is allowed to use. If the Tenant isn't leasing all of a particular piece of land owned by the landlord, use wording such as, "those portions of the lands legally described as ... outlined on Schedule "A" in red consisting of ____ acres, more or less" (and make sure to attach a map of the lands as Schedule A, with the leased portion outlined on it).

If part of the leased land will be used for crops and part will be used for pasture or hay, the parties can indicate the number of acres to be used for each purpose.

Insert list of buildings, portable or otherwise, that the tenant will be entitled to use.

SAMPLE

Tenant should place appropriate caveat to support the agreed terms of lease.

2.0 Term of the Lease

This lease will be in force for a term of _____ years begin[illegible] on the _____ day of _____, 20_____ and ending on the _____ day of _____, 20_____ unless terminated in accordance with the provisions of this lease.

3.0 Rent

For a crop share lease

3.1 The Tenant will pay the Landlord a yearly rent of _____ [illegible] whole crop which was grown on the Leased Lands during the term of this lease (the Landlord's Share). The Landlord's Share becomes the property of the Landlord at the time the crop is seeded. In addition, the Tenant will pay the Landlord a rental of $_____ for use of pasture or hay land [illegible] the Leased Land. The Yearly Rent is the total of the Landlord's Share and the rent payable for pasture or hay land.

For a cash rent lease

3.1 The Tenant will pay the Landlord a yearly rental of $ [illegible] the use of the Leased Property (the Yearly Rent).

The landlord and the tenant may wish to specify how much of the Yearly Rent is for the cultivated portion of the Leased Lands, how much is for the grazing portion, and how much is for hay land. If so, add the words "calculated as follows:" to the above clause, and list the [illegible] for each item.

For a flexible cash rent lease

Be careful when filling in this clause. If the effect of this clause is that the price is to be agreed at a later date, the lease will not be legally enforceable. It's all right to use a formula, rather than a money amount, but there must be no uncertainty as to how the rent is calculated. This may be something to discuss with a lawyer.

3.1 The Tenant will pay the Landlord yearly cash rent plus [illegible] Rent) in an amount calculated by multiplying _____ bush[illegible] of _____ *[specify type and quality of grain]* by the average [illegible] *tonne]* of the same type and quality of grain at _____ *market location]* on _____ *[insert date]*.

For all kinds of crop lease

3.2 The Yearly Rent will be paid by the Tenant on or before [illegible] year, beginning on _____, 20_____

[Insert date the first rent payment is due.]

SAMPLE

3.2 The Yearly Rent will be paid by the Tenant as follo

[Insert details of when and/or how the rent will be paid.

OR

For crop share leases only

3.3 Subject to the Landlord's right to sell any crops harveste
Lands and paid to the Landlord as rent pursuant to paragraph
right shall only be exercised upon notice being given by the Landlord to the Tenant), the Tenant shall be responsible on behalf of both the Landlord and Tenant for the sale of all crops harvested from the Leased Lands during the of this Agreement and shall, upon giving notice to the Landlo
crops harvested at such places and for such prices as the Ten
to be reasonable in light of market conditions.

4.0 Operation and Maintenance of the Farm

4.1 Use of the Leased Property

4.1.1 The Tenant will use the Leased Lands only for the purp
crops or forages.

Grazing is not permitted

OR

4.1.1 The Tenant will use the Leased Lands only for the purposes of growing crops or forages or the pasturing of livestock.

Grazing is permitted. A more specific clause could be written if necessary.

4.1.2 The Tenant will not, without the prior written consent o
lord,

a) change the natural course of any waterways on the Leased Lands;

b) cut down trees growing upon the Leased Lands, nor will h
person to do so;

c) allow the entry of any persons onto the Leased Lands for th
outfitting, eco-tourism, picking of berries or flowers or any such plants;

d) remove any sand, gravel, clay, stone or other such substances existin
under the surface of the Leased Lands; or

e) bring into cultivation any new land.

4.2 Farming Decisions

4.2.1 The Tenant will make all decisions with respect to growing crops or raising livestock on the Leased Lands, unless stated otherwise in this lea
but all decisions made by the Tenant will be in accordance with go
arm
practices and in accordance with the provisions of this lease.

SAMPLE

OR

4.2.1 The Tenant and the Landlord will agree on an annu[illegible] pl[illegible] _____ of each year. The cropping plan will include crop[illegible]e [illegible]n, livestock to be pastured, pesticides to be used and conse[illegible]on[illegible]tic be employed for each year unless stated otherwise in thi[illegible] Tenant and the Landlord have not agreed on an annual cr[illegible] specified date.

[Describe here who will make the decisions if the Landlord and the Tenant cannot agree upon a cropping plan. This can be the Landlo[illegible] the Tenant, or a mutually agreeable third party.]

OR

4.2.2 Notwithstanding anything in this lease, the Tenant[illegible] genetically modified crops on the Leased Lands.

OR

4.2.2 Notwithstanding anything in this lease, the Tenant[illegible]w genetically modified crops on the Leased Lands without [illegible]s prior written consent. If the Landlord consents to the Tenant g[illegible]ng c[illegible]ically modified crops, the consent will be deemed to include an[illegible] from the Landlord by the supplier of the genetically modi[illegible] including, but not limited to, consent to access to the Leased Lands and the Landlord's grain storage bins for inspection by the supplier of the genetically modified seed. If the Landlord consents to the[illegible] genetically modified crop, the Tenant agrees that he will[illegible] with the terms of any contract or licence agreement enter[illegible]he Tenant with the supplier of the genetically modified seed.

4.3 Farming Costs

For a cash rent or flexible cash rent lease

The Tenant will be responsible for all costs of farming the[illegible] unless otherwise stated in this lease.

For a crop share lease, generally, the input costs are shared between the landlord and the tenant.

The Landlord and the Tenant will share the costs of the crop inputs described below in the same proportion as their respective sha[illegible] crop set out in Clause 3.1 of this lease:

[List the various items, such as fertilizer, herbicides,[illegible]cides, seed treatments.]

4.4 Resource Protection

4.4.1 The Tenant will, at all times during the said term, use[illegible]nd m[illegible] the Leased Lands in a proper and husbandlike manner for[illegible]ou[illegible] farm only and will not impoverish or waste the same.

4.4.2 The Tenant will:

a) cultivate, seed, control weeds, insects, and disease, harv[illegible]ps a[illegible] pasture livestock on the Leased Lands in a sustainable manner and in accordance with the requirements of the laws of Alberta;

b) use agricultural chemicals, including pesticides, herbicides, and fertilizer, in accordance with label directions; and

c) minimize soil loss from erosion.

SAMPLE

4.4.3 The Tenant will not:

a) allow overgrazing of any land that is in grass or forages;

b) overload nutrient levels on the Leased Lands or adjacent w

c) allow pesticide to drift onto non-target lands, including adj
belts, and yard sites;

d) permit or allow the accumulation of any waste material, debris, refuse or
garbage on the Leased Lands; or

e) allow any site contamination such as, but not limited to, ch
hydrocarbons, or any other waste materials on the Leased La
water bodies.

f) permit or allow any hazardous or toxic substances to emana r flow
from or on the Leased Lands and the Tenant shall carry on his n
accordance with environmental statutes and regulations. The ant be
liable for any hazardous or toxic substances emanating, escap
or on the Leased Land as a result of the operations of the Ten
Tenant agrees to indemnify and save harmless the Landlord from and against
any and all liability, claims, actions, losses, damages, penalties, fines and costs
to which the Landlord may be put or suffer as a result of any h
substances emanating, escaping or flowing from or on the Le
violation of any environmental statutes or regulations. This in by
the Tenant shall survive the termination of this agreement.

4.5 Pesticides

By December 31 of each year of this lease, the Tenant will sup
with a record of what pesticides were applied to crops growi
the past cropping season.

4.6 Crop Residues

Unless otherwise agreed in a cropping plan, crop residues (in haff
and stubble) remaining after harvesting the crops on the Leas t
be burned, baled or otherwise removed, used or disposed of w
of the Landlord.

4.7 Landlord's Payments

4.7.1 The Landlord will promptly pay all mortgages and encu n
the Leased Lands and will save the Tenant harmless in respe er

4.7.2 The Landlord agrees to pay all taxes, rates and assessm ma
levied against the Leased Lands during the term and the costs o ing
buildings and improvements forming part of the Leased Land.

SAMPLE

If the landlord gives permission to make major improvements (which can be included in this lease), the landlord and tenant should also specify who will pay the costs of making the improvement and how much, if any, compensation the tenant will receive for the labor involved in making the improvement. This can be done in a separate agreement such as the Consent to Make Major Improvements (included in this publication).

4.8 Improvements

The Tenant will not make major improv[illegible]ements without p[illegible]ri[illegible]con[illegible] of the Landlord. Except as otherwise s[illegible]pecified in this lea[illegible] has the sole right to decide whether an improvement is a[illegible] improvement. Major improvements inc[illegible]lude: water develo[illegible] control, fencing and building construct[illegible]tion, clearing or breaking of land, and seeding land to pasture or hay unless [illegible]otherwise agreed in a cropping p[illegible] Major improvements do not include no[illegible]rmal repair or maintenance to the Leased Property.

Title to all improvements shall vest in [illegible]the Landlord and n[illegible] shall be sold, removed, disposed of or [illegible]encumbered without [illegible] consent of the Landlord.

4.9 Repair of Buildings, Fences a[illegible]nd Improvements

The tenant shall be responsible for th[illegible]e maintenance and [illegible] improvements, including all fences, [illegible]on the Leased Lands [illegible] collectively referred to as the "leased [illegible]l assets"). The Tenan[illegible] the labour necessary for the mainten[illegible]ance and upkeep of the leased assets. The Landlord shall provide the suppl[illegible]ies and materials for [illegible] and upkeep of these leased assets se[illegible]ve and except for th[illegible] materials needed for incidental repai[illegible]rs, which the tenant [illegible]vide. Notwithstanding anything contained [illegible]herein however, the[illegible] responsible to provide the labor, sup[illegible]plies and materials necessary [illegible] respect to major structural repairs or [illegible]changes to the build[illegible] the Leased Lands.

5.0 Grain Storage

5.1 Grain Stored on Land at Com[illegible]mencement of Lease

5.1.1 If the Landlord has grain store[illegible]d on the Leased Prop[illegible] beginning of the term of this lease, t[illegible]he Landlord's grain [illegible]e store[illegible] the Leased Property for a maximum [illegible]of _____ days afte[illegible] commencement of this lease withou[illegible]t charge for storage or [illegible] the Tenant.

5.1.2 If the Landlord does not remo[illegible]ve his stored grain withi[illegible]n the t[illegible] specified above, the Tenant may at [illegible]his option require the [illegible]lor[illegible] storage charge of $_____ per da[illegible]y until the grain is re[illegible]. [illegible] may also remove the stored grain a[illegible]nd deliver it to the La[illegible]rd[illegible] the Landlord will pay the reasonable co[illegible]sts of the removal and[illegible]

SAMPLE

5.2 Grain Stored on Land at End of Lease

This clause below is one example of how to handle grain stored on the leased land at the end or termination of a lease. It does not give the landlord a lien against stored grain for unpaid rent, nor does it say what happens if the grain has not been harvested yet.

5.2.1 If the Tenant has grain stored on the Leased Property at [illegible] this lease, whether the term of the lease expires or the lease is ter[illegible] accordance with the provisions of the lease, the Tenant's grai[illegible] the Leased Property for a maximum of _____ days after the te[illegible] lease without charge for storage or interference from the Landlord.

5.2.2 If the Tenant does not remove his stored grain within the time specifi[illegible] above, the Landlord may at his option require the Tenant to remove the grai[illegible] require the Tenant to pay a storage charge of $_____ per [illegible] may also remove the stored grain and deliver it to the Tenant, [illegible] will pay the reasonable costs of the removal and delivery.

5.3 Storage of Grain

While this lease is in force, the Landlord will provide grain sto[illegible] for Landlord's Share of the crop and the Tenant will provide stora[illegible] the crop.

OR

While this lease is in force, the Landlord will provide storage for _____ tonnes *[or bushels]* of crop. The Tenant will provide any additional storage that is needed for crop grown on the Leased Lands.

6.0 Insurance

6.1 Property Loss and Liability Insurance

6.1.1 The Landlord will maintain insurance against loss or de[illegible] Leased Buildings in at least the amount of $_____ .

6.1.2 The Tenant will maintain insurance against any liability of the Tenant to third parties arising from or in relation to the Tenant's use or occupan[illegible] Leased Property, in at least the amount of $_____ .

6.1.3 The Landlord will maintain insurance against any liabil[illegible] the La[illegible]rd to third parties.

6.2 Other Insurance

6.2.1 The Landlord will maintain further insurance as follows:

[Insert details]

6.2.2 The Tenant will maintain further insurance as follows:

[Insert details]

SAMPLE

A crop share lease should contain the following provision for crop and hail insurance. For cash and flexible cash leases, the landlord may wish to include the provision in order to ensure that the tenant can pay the rent even if there is a crop failure.

6.3 Crop Insurance

6.3.1 With respect to the All Risk Crop Insurance availab th vi of Alberta, the Tenant and the Landlord agree as follows:

[Insert details of the type of insurance, who will pay statement that whoever pays for the insurance is en proceeds, if any, of the insurance.]

6.3.2 With respect to hail insurance available in the Province of Alberta each party is free to purchase coverage on that party's sh growing on the Leased Land. Each party will bear the co benefits of insuring his share of the crop.

7.0 Payments Other Than Rent

Generally, a specific program has its own rules as to who qualifies to apply for benefits.

For example, the Alberta Farm Income Assistance Program 2000 specified that the benefits were payable to the operator of the land.

7.1 Government Income Support Payments and Sub

In the event that any payment, subsidy or other reimburs under any federal or provincial statute or regulation, or b or marketing agency, the Landlord and the Tenant agree to share such payments and contributions required for such payments

[Landlord and tenant agree on how to share or who payments on existing programs. Landlord and Tena will receive benefits of any future programs.]

7.2 Payments for Third Party Activities on the Leas

7.2.1 Any payments arising from the following situation Activities)

a) oil and gas activity, including exploration, development and producti

b) pipeline development;

c) seismic or survey activity, including exploration;

d) utility development, including power or telephone line

e) access to the Leased Lands by someone other than the Landlo Tenant, including use or construction of roads and use of rights of way;

f) expropriation of land under the Laws of Alberta;

will be paid to the party to this lease that has suffered th ct Party Activity.

7.2.2 The effect of the Third Party Activity will be deemed bee suffered entirely by the Tenant in the following cases:

a) where the payment is compensation for work completed by the Tenant such as, but not limited to, fence reconstruction, grass reseeding or top soil leveling;

b) where the payment is compensation for a nuisance or adverse effect to the tenant.

SAMPLE

7.2.3 The effect of the Third Party Activity will be deemed to [illegible] entirely by the Landlord where the payment is compensation [illegible] the value of the Leased Lands.

7.2.4 The compensation payable for a right of entry shall be [illegible] property of the Landlord.

The compensation paid for right of entry is paid to the landlord, usually in the form of an initial payment and on-going annual payments. If the tenant suffers substantial adverse effect (such as farming around a well-site, dust or traffic), he may want to negotiate with the landlord to receive a portion of the annual payment.

7.2.5 Where the payment is for crop damage, the effect of the [illegible] Activity will be deemed to be shared between the Landlord a[illegible] in the same proportion as their respective shares of the crop.

For a crop share lease

7.2.5 Where the payment is for crop damage, the effect of the [illegible] Activity will be deemed to be suffered entirely by the Tenant.

For a cash rent or flexible cash rent lease.

8.0 Termination of the Lease

8.1 Termination by the Landlord or the Tenant

Either the Landlord or the Tenant may terminate this lease by giv[illegible] writing to the other party at least _____ days prior to the ann[illegible] of this lease. In any year, the anniversary date is the same day and m[illegible] and month on which the original term of the lease began, as s[illegible] above.

It's important that both parties agree if clause 8.1 will apply, or if the lease will be binding as outlined in clause 2. Clause 8.1 can be used if both parties wish to have an escape that permits either party to terminate the lease without contractual reprisal. If the intention is to have a binding agreement, then 8.1 would be deleted.

8.2 Termination by the Landlord

8.2.1 The Landlord may terminate this lease by giving _____ w[illegible]en [illegible] the Tenant if any of the following events occur:

a) the Tenant makes, or begins to make, a major improvement [illegible]tho[illegible] pr[illegible] consent of the Landlord;

b) the Tenant fails to comply with a remedial order, environment[illegible]ecti[illegible] order, or other order issued by a government department or agency;

c) the Tenant fails to comply with his obligations under Clause 4.4.1, 4.4.2 and 4.4.3 of this lease; or

d) the Tenant makes an assignment for the benefit of his creditors or becomes bankrupt or insolvent.

Most leases allow the landlord to terminate the lease if the tenant fails to fulfil his oblications in some significant way. An example of such a clause is given below. The tenant can also include a clause allowing him to terminate the lease if the landlord does certain things, such as interfering with the tenant's right to quiet use and enjoyment of the leased property.

SAMPLE

8.2.2 This lease may be terminated immediately by the L[illegible]or[illegible]n written notice to that effect given to the Tenant in the eve[illegible]at [illegible]Te[illegible] should fail to pay rent or any part thereof as required by t[illegible]ea[illegible]r f[illegible] to commence spring work by _____ (date).

9.0 General Provisions

9.1 Incoming Tenant

An incoming tenant, purchaser, or the landlord shall have[illegible] on the land contained in this agreement after harvest in t[illegible] the expiration of the said term for the purpose of preparing the land for crop.

9.2 Landlord's Right of Inspection

The Landlord or his agent or employee may enter the Lea[illegible]Prop[illegible]at any reasonable time to inspect the Leased Lands or Leased B[illegible]

If repairs or amendments are required, the tenant shall m[illegible] repairs or amendments within one month of receiving written notice from the Landlord.

9.3 Protection of the Landlord Against Liability

The Tenant will indemnify and save harmless the Landlord ag[illegible] claims, liabilities, demands, damages or rights or causes of acti[illegible] made or asserted by anyone arising out of or incidental to[illegible] Tenant's use or occupancy of the Leased Premises includi[illegible] to, the Landlord's legal fees and disbursements on a full i[illegible]

9.4 Assignment and Subletting

The Tenant will not assign or sublet his interest in this lea[illegible] his interest in this lease.

OR

The Tenant will not assign or sublet his interest in this le[illegible]of his interest in this lease, without the Landlord's prior wri[illegible]

Normally, the tenant will be able to complete the current crop production cycle. Depending on the agreement in clause 2 and 8.1, this clause gives the parties the opportunity, but not the obligation, to terminate the agreement if the land is sold.

9.5 Sale of the Leased Property

If the Landlord sells or otherwise disposes of all or part of [illegible]Lea[illegible] Property, he will do so subject to the provisions of this le[illegible]nl[illegible] Landlord and the Tenant agree otherwise in writing.

9.6 Arbitration

Any disputes arising between the Landlord and the Tenant regarding this lease or relating to the formation of this lease will be decided by binding arbitration in accordance with Alberta's *Arbitration Act*, unless otherwise agreed to by the Landlord and the Tenant. Either the Landlord or the Tenant may commence the arbitration by giving the other party a written notice describing the dispute and stating that the dispute is being referred to arbitration.

SAMPLE

9.7 Landlord's and Tenant's Remedies

Nothing in this lease prevents the Landlord or the Tenant fro[m] [en]forc[e] a[ny] remedies that each of them may have, in law or in equity, in a[ddition] to the remedies contained in this lease, except that neither the Land[lord] nor the Tenant may commence or continue legal proceedings in a Court in re[spect of a matter] which is governed by Clause 9.6 above.

As a matter of law, landlords and tenants have various remedies for breach of a lease. This clause preserves those remedies. For example, a landlord may be entitled to seize the tenant's property located on the leased lands if the tenant does not pay the rent. A tenant may be entitled to an injunction to stop the landlord from interfering with the tenant's farming. This clause preserves each party's legal rights, except the right to sue in a Court if the matter is something that should be arbitrated under clause 9.6.

9.8 No Termination on Death of a Party

This lease will survive the death of either the Landlord or the [Tenant] and will be binding on the deceased party's personal representatives, he[irs, successors and assigns].

9.9 Alberta Law Applies

This lease will for all purposes be governed by the laws of th[e Province of] Alberta.

9.10 Gender and Plurals

Where the singular is used in this lease, it includes the plural unless the context requires otherwise. Where the masculine is used, it includes [the feminine and the] feminine.

9.11 Notices

Any written notice given under this lease may be given by:

[Insert a list of ways the parties are willing to receive no[tices, such] as by delivery to the addresses given above, by registered ma[il to] addresses designated to receive such notices (such as the party's l[ast] known address), by fax to a specified number.]

9.12 Amendments to the Lease

Any amendment to this lease must be in writing and signed [by] the Landlord and the Tenant. Alterations to this lease must be in [writing] and signed or initialed by both the Landlord and the Tenant.

Dated this _____ day of _____, 20_____)

_____) _____

(Witness to the Landlord's signature) *(Signature of Landlord)*

Dated this _____ day of _____, 20_____)

_____) _____

(Witness to the Tenant's signature) *(Signature of Tenant)*

SAMPLE

Consent to Make Major Improveme[illegible]s

Re: Crop lease dated _____ between_____

Landlord) and _____ (the Tenant)

All terms used in this Consent have the same meaning as in the above crop lease unless otherwise stated.

1. The Landlord hereby authorizes the Tenant to make the following improvements to the Leased Property (the Improvements):

[Insert the improvements that the tenant is authorized to make. Include enough detail that a stranger would be able to understand what is being authorized just by reading document.]

2. The Tenant will pay the costs of making the Improvements.

3. The Landlord will pay the Tenant the following compensation for making the Improvemen

[The Tenant should be compensated for his labor. The landlord and the tenant may also that the tenant should receive back some portion of the costs of making the improveme

4. Any dispute in relation to this Consent or the Improvements that cannot be resolved between the Landlord and the Tenant will be referred to arbitration in accordance with the provisions of the above

Date: _____

_____ _____

Witness *Landlord*

Date: _____

_____ _____

Witness *Tenant*

SAMPLE

Caveat Forbidding Registration

To the Registrar of the _____ Land Registration

Take notice that I _____

(insert name and address of caveator)

claim _____

(specify the estate or interest claimed)

in _____

(legal land description)

standing in the register in the name of _____ I forbid the registration of any person as transferee or owner of, or of any instrument affecting the s... interest, unless the instrument or certificate of title, as the case may be, is expressed to be ... claim.

Appoint _____ as the place at which notices and pr... hereto may be served.

Dated this _____ day of _____, 20____.

Affidavit in Support of Caveat

I, _____ make oath and say as ...

1. I am the within named caveator.

2. I believe that I have a good and valid claim upon the said land, and I say that this caveat is no... the purpose of delaying or embarrassing any person interested in proposing to deal therewi...

Sworn before me at _____)

in the Province Alberta)

_____

(Signature of caveator)

this _____ day of _____ A.D. 20____)

_____

A Commissioner for Oaths in and for the Province of Alberta

SAMPLE

Lease Renewal Form

SAMPLE

We, _____
Name(s) of Landlord(s)

_____ and
Address(es)

_____
Name(s) of Tenant(s)

_____
Address(es)

being parties to a lease agreement for the space of _____ years from the _____ day of _____, 20_____ to the _____ day of _____, 20_____.
(month) *(month)*

on the following farm land premises:

_____

_____

_____

_____

do hereby extend the term of the said agreement for the space of _____ years from the _____ day of _____, 20_____ to the _____ day of _____, 20_____ according to the terms and conditions outlined in the said agreement unless specified differently, that is to say:

_____

_____

_____

_____

IN WITNESS WHEREOF the said parties hereto have hereunder set their hands.

Dated this _____ day of _____, A.D. 20_____.

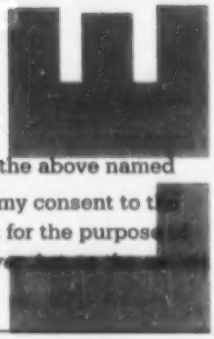
_____ _____
Witness *Landlord*

_____ _____
Witness *Landlord*

_____ _____
Witness *Landlord*

_____ _____
Witness *Landlord*

The Dower Act



Consent of Spouse

I, _____ being married to the above named

_____ do hereby give my consent to the disposition of our homestead, made in this instrument, and I have executed this Document for the purpose of giving up my life estate and other dower rights in the said property give to me by *The Dower Act* and necessary to give effect to the said disposition.

_____

(Signature of Spouse)

Certificate of Acknowledgment by Spouse

1. This document was acknowledged before me by _____ apart from her husband (or, his wife).

2 _____ acknowledged to me that she

(a) is aware of the nature of the disposition (or agreement),

(b) is aware that *The Dower Act*, gives her (or, him) a life estate in the homestead and the right to prevent disposition of the homestead by withholding consent,

(c) consents to the disposition (or agreement) for the purpose of giving up the life estate and other dower rights in the homestead given to her (or, him) the *The Dower Act*, to the extent necessary to give effect to the said disposition (or agreement),

(d) is executing the document freely and voluntarily without any compulsion on the part of her husband (or, his wife).

Dated at _____ , in the Province of Alberta

this _____ day of _____ A.D. 20_____ .

_____

(Title of Officiating Officer)

Affidavit

I, _____ of _____ in the Province of Alberta _____ make oath and say:

(Occupation)

1. THAT I am the Lessor named in the within instrument.
2. THAT I am not married.

or

THAT neither myself nor my spouse has resided on the within mentioned land at any time since our marriage.

Sworn before me at _____)

in the Province of Alberta)_____

(Signature of Landlord)

this _____ day of _____ A.D. 20_____)

_____

A Commissioner for Oaths in and for the Province of Alberta

Affidavit of Execution

I, _____

of _____ in the Province of Alber

say:

1. That I was personally present and did see _____

Named in the within instrument, personally known to me to be the person(s) named therein, duly sign and execute the same for the purpose named therein.

2. That the same was executed at the _____ of _____ in the Province of Alberta, aforesaid and that I am the subscribing witness thereto.

3. That I know the said _____

And he/she/each is in my belief of the full age of eighteen years.

Sworn before me at _____)

In the Province of Alberta)

(Witness sign here

this _____ day of _____ A.D. 20_____)

_____

A Commissioner for Oaths in and for the Province of Alberta

Affidavit of Execution

I, _____

of _____ in the Province of Alber

say:

1. That I was personally present and did see _____

Named in the within instrument, personally known to me to be the person(s) named therein, duly sign execute the same for the purpose named therein.

2. That the same was executed at the _____ of _____ in the Province of Alberta, aforesaid and that I am the subscribing witness thereto.

3. That I know the said _____

And he/she/each is in my belief of the full age of eighteen years.

Sworn before me at _____)

In the Province of Alberta)

(Witness sign here

this _____ day of _____ A.D. 20_____)

_____

A Commissioner for Oaths in and for the Province of Alberta

SAMPLE

Appendix I

Cropland Leasing in Alberta

Summary of Staff Survey

February, 2000

Prepared by Clare Sturgeon and Bob Winchell
Agriculture Business Management Branch
Olds, Alberta

The following is a brief overview of cropland leasing issues and practises in Alberta, based on the observations and experiences of the crop specialists and farm management specialists working in Alberta Agriculture, Food and Rural Development's district offices.

- Some landlords like a crop share arrangement because it enables them to remain somewhat involved in farming and retain some tax benefits.
- The possibility of a higher return from a crop share is attractive to some landlords.
- Some tenants find that a crop share arrangement provides reduced risk as the amount of rent is tied to yield and market prices for crops.
- Some tenants like a crop share arrangement because it can assist with cash flow. Rent payments are made as the crop is sold and the landlord assists with purchase of inputs.
- Some landlords like a cash lease arrangement because it's simpler than crop share and the income is more certain. Sometimes, age or lack of experience make it difficult for a landlord to be involved in the production and marketing decisions, and communication with the tenant that's required in a crop share arrangement. In these cases, a cash arrangement is preferred by a landlord.
- Some tenants like a cash rent arrangement because it provides more flexibility in how the land is farmed and managed along with the rest of the tenant's land. The use of modern crop inputs, centralized on farm storage facilities and a variety of marketing choices make it difficult to make a crop share arrangement work.
- Some tenants like a cash rent arrangement because the amount of rent is known up front, the amount is generally less than with a crop share and the rewards of good management or high crop prices go to the tenant.
- It's often difficult to find out what land is renting for in a local area. Word of mouth information can be misleading as the underlying terms of a lease are usually unknown.
- It seems that in some regions (brown soil zone, black soil zone, and highway #2 corridor) cash rent prices are influenced more by the desire of tenants to obtain land than by an economic analysis of the rates being paid.
- In regions where there's a larger supply of land (Peace River Region), landlords are finding it beneficial to ask for half of the cash rent in the spring in order to secure a commitment from the tenant for the upcoming crop season.
- It's really better to put a land lease agreement in writing. A lot of problems are avoided by doing this.

Crop Share Arrangements versus Cash Arrangements in Alberta

Region*	Crop Share	Cash Rent
	------ Per cent of total rented land ------	
Irrigated Brown Soil	40	60
Brown Soil	60	40
Black Soil	35	65
Highway #2 Corridor	35	65
Grey Soil	30	70
Peace River	40	60

* based on the soil zones of Alberta.

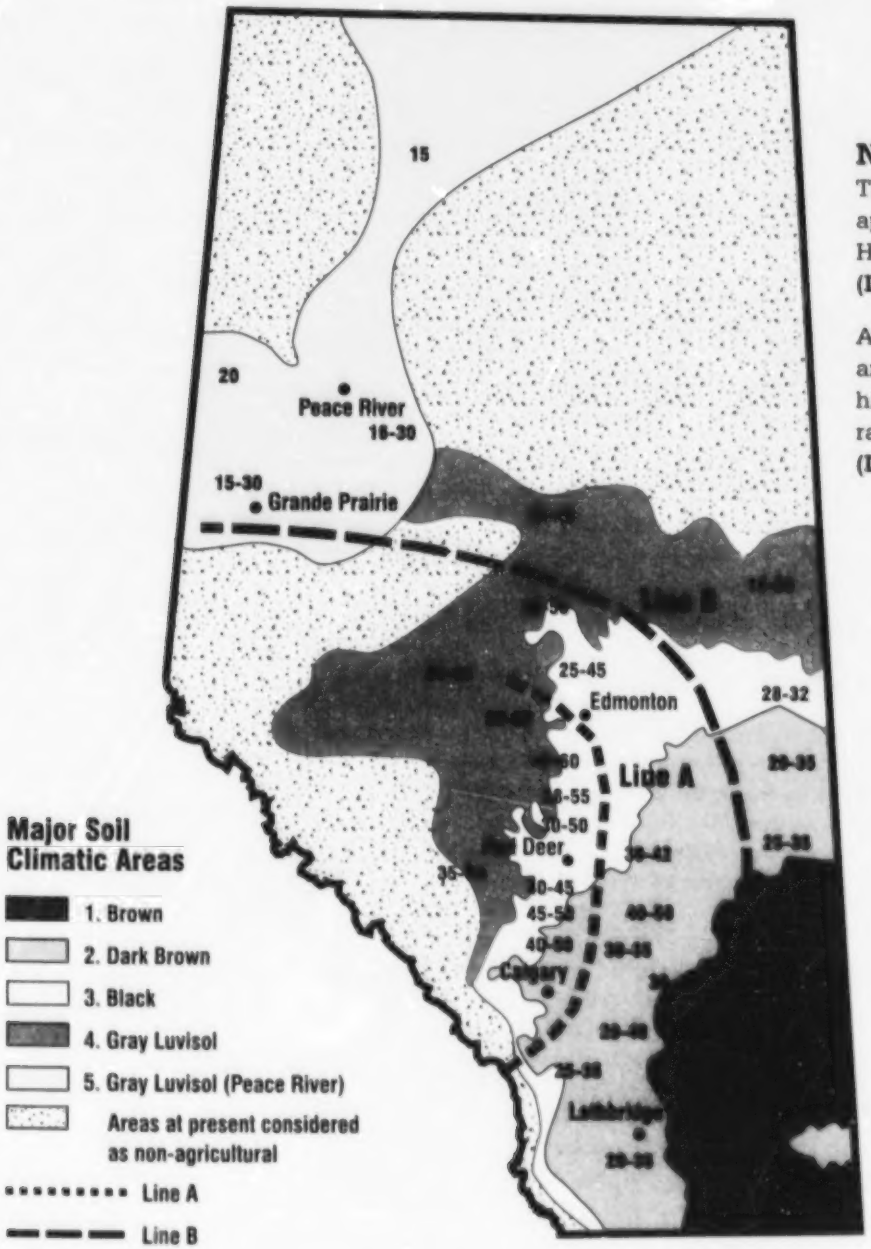
The Highway #2 corridor is a portion of the Black Soil Zone that includes the counties and municipal districts between Calgary and Edmonton, along Highway #2.

Cash Rental Rates in Alberta

RegionRange	Most Common Range	
	---------- $ per acre ----------	
Irrigated Brown	$35 - $300	$100 - $225
Brown Soil	$5 - $40	$20 - $35
Black Soil	$20 - $50	$25 - $40
Highway #2 Corridor	$30 - $60	$40 - $50
Grey Soil	$15 - $50	$20 - $40
Peace River	$15 - $30	$17 - $25

For more detailed information on rental rates see Alberta Agriculture, Food and Rural Development's *Custom Rates Survey - Crop and Pasture Lease Rental Final Report 1999.*

Cash Rental Rate Ranges in Alberta, 1999



Note:
The highest rental rates appear to follow Highway #2 **(Line A.)**

As you travel north and east from highway #2 the rates decrease. **(Line B.)**

Appendix II

Rate of Change in Land Values in Alberta

A record of agricultural real estate transfers is maintained by Alberta Agriculture, Food and Rural Development's Statistics and Data Development Branch. The average value of land per acre is reported by county and by year.

The following table shows the average year to year change in land values over the 10-year period from 1988 to 1998. It's summarized by soil zones across the province. Although the year to year change in land values shown in the table is positive over the 10-year period, there was a considerable variation from one year to the next. In some years values were down as compared to the previous year, and in other years values were up. The percentage change in land values reported in the table below are the average year to year change over the 10-year period.

There are two sources of income from land. One is from productive earnings such as net profit (or loss) from a farming enterprise or from a rental income from the land. The second source of income (or loss) is from the change in value of the land. The table below provides a summary of the income (land value appreciation) that accrued to farmland in Alberta from 1988 to 1998.

Soil Zone	% Change
Brown Soil Zone	9%
Black Soil Zone	7%
Highway #2 Corridor*	6%
Grey Soil Zone**	6%
Peace River Region	8%

* a portion of the black soil zone that includes the counties and M.D.s between Calgary and Edmonton along Highway #2.

** *not including the Peace River region*

Appendix III

Alberta Arbitration and Mediation Society

Alberta Arbitration and Mediation Society
The John V. Decore Centre for Dispute Resolution
110 Law Centre, University of Alberta
Edmonton, Alberta T6G 2H5
Telephone: (780) 433-4881 Toll-free (Canada-wide): 1-800-232-7214
Fax: (780) 433-9024
E-mail: aams@aams.ab.ca

Choosing an Arbitrator

Under the *Arbitration Act of Alberta*, the parties to a dispute are given wide discretion in the way that they choose an arbitrator. Several methods have found common usage.

1. For disputes which involve only a small sum and which do not involve massive amounts of evidence, a single arbitrator will probably provide the most satisfactory result from the point of view of cost and time. Arbitrators are required to be impartial, and it is in the best interests of the parties to make sure that such is the case. Thus, it may be desirable for some independent person to nominate an arbitrator. In the alternative, each party might select a person to work with the other person(s) so selected, to pick a single arbitrator. Another simple method is for one party to nominate three to five individuals who would be satisfactory to that party and allow the other party to pick one individual from that list. In an event, the individual selected as an arbitrator should meet with representatives of the parties and disclose to them any potential conflict of interest. The parties must also be convinced that the person chosen has the required ability and time to conduct the arbitration.
2. For arbitrations concerning large amounts or where the evidence to be presented is likely to be very complex or extensive, it is often desirable to use a board of arbitrators. In such a situation, each party will nominate one person to the board and those two individuals will choose a third person to be the board chairman or umpire. Except for some special situations such as labor arbitration, the nominees are expected to be impartial. However, it is quite possible that they may have been chosen on the basis of their previously known views. The nominees must not have any other connection with the parties who choose them and of course the chairman must be absolutely impartial and independent. Again, it is the responsibility of the parties to satisfy themselves that the chairman is capable of conducting the arbitration and that he or she has the type of training and experience required.
3. Because of the wide scope of subjects that may be the reason for an arbitration, the Society cannot and does not endorse or evaluate any individual as being of the right background and experience to conduct a specific arbitration. In all cases, the parties must assure themselves that the individual chosen as a sole arbitrator or chairman of an arbitration board has the right qualifications. These qualifications include training, experience and time, as well as ability as an arbitrator. Different blends of these factors will determine who is the best candidate.
4. Once a suitable candidate has been chosen, it's essential that the parties meet with that person to discuss procedures, timing and fees. The candidate will be able to make suggestions in regard to these factors. Once they have been resolved, a written agreement should be produced which clearly sets them out. In many cases, a prior agreement may have established general procedures, in which case they should be followed.